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ART. I.—MISSIONARY SCHOOLS IN INDIA.

OF the manner in which the work of evangelization should be conducted, different views are taken. If the missionary devote himself to the duty of communicating instruction to the rising race, it is deemed by some a relinquishment of the sacred office of the ministry; if he preach to the adult population where he is located, and visit distant cities, towns and villages, to carry to the people the bread of life, others affirm that instead of wandering about the country, he ought to stay at home and educate the young; he is never in the right place, never at the right work, and, to follow the advice of his numerous counsellors, must alter his course of action with every change of the moon. These censors may be dismissed without further notice, but persons of another class demand attention. Among those that object to missionaries becoming school-masters, there are men who possess great talents, a devout spirit, and deep solicitude for the redemption of the pagan world, whose characters are adorned with every virtue, whom we must respect and love, though unable to coincide in their opinions. We will endeavour to state with fairness, and as clearly as possible, the reasons

that have led them to the conclusions to which they have come.

They are to the following effect. Among the Romans and the Greeks, not two in a thousand knew the alphabet of their mother tongue, and among the Jews, the art of reading was little more widely spread; yet our Lord neither personally nor by the agency of others instituted schools. The work he assigned the apostles was to publish in his name the tidings of redemption, and that they understood this to be their work, may be reasonably inferred from the fact that they determined to know nothing among men, save Jesus Christ and him crucified.* The ministers who came after the apostles, appear to have taken the same views of their obligations. Nowhere do we find them teaching any branch of secular learning. As each age, with all its necessities, was present to the omniscient mind of the Redeemer when he founded the Church, it may be assumed that in prescribing the duties of the first ministers, he prescribed the duties of their successors to the end of time. For awakening the souls of men into spiritual life, he appointed the preaching of the Word, and, till some peculiarity be discovered in the moral state or mental organization of a people, it must be considered as suitable and efficacious now as it was then. That it is so, interesting proofs are afforded in every region of the globe. But human learning has no tendency to produce the same result. Was any man ever brought a step nearer heaven by knowing a little more than his neighbours of history, geography, or mathematics? Many persons among the Romans, the Greeks, and the Jews, distinguished for their talents and acquirements, contemned the doctrines of the Cross, and in every subsequent period such revilers have been numerous. Voltaire, Hume, and Gibbon are conspicuous examples of great learning being compatible with hostility to the Christian faith, of the pride of the intellect fostering the pride of the heart.

As to teaching languages, literature, geography, logic, geology, mathematics, astronomy, philosophy, and political economy in a Christian way,—a plea which is often made to justify the time devoted to them,—it is urged that it is just as possible as doing any other worldly business in a Christian way, as mending shoes, making bread, or churning butter in a Christian way; and it is not more likely that young men by their secular studies will be prepared to receive the gospel than that cobblers, bakers, and dairymaids will by their occupations become pious;

for, though not necessarily unfriendly to Christianity; these labours are quite distinct from it.

It is likewise stated that education would be carried on, were ministers to devote themselves entirely to their legitimate work. Both Hindus and Mohammedans go to missionary schools, not because they prefer them to others, but because they can be prepared at a small expense to fill lucrative situations, and rise in life; for the sake of the secular learning to be obtained, they submit to listen to the religious instruction which is given.* In this there is nothing peculiar, many people in other countries are governed by no higher motives, and in the same circumstances would, it is to be feared, adopt a similar course. For instance, were an excellent classical, mathematical, and commercial academy opened by Roman Catholics in any city or town in England, at which the fees were only a tenth of the sum paid in Protestant institutions, it is probable, nay, almost certain, that notwithstanding the character of its religious teaching, it would command a large number of pupils, for generally speaking, parents feel a more lively interest in their children getting on in this world than in their preparation for the next. They would not wish them to believe the dogmas of popery, but, fully aware of the danger of their doing it, they would run the risk for the sake of obtaining for them, on the lowest pecuniary terms, a good secular education. The cheapness of the academy would be the secret of its success, and it is the secret of the success of the missionary schools in the cities and towns of India. Hindu parents, like others, are influenced by worldly principles, and in securing temporal advantages pay as little regard to the lessons of the Vedas, as nominal Christians pay to the instruction of the Bible. They have no desire that their sons should become followers of the Redeemer, and would consider their conversion a great calamity, yet they willingly send them to missionary institutions, though they know Christianity is daily taught, and there is consequently danger of their imbibing its spirit and renouncing the religion of their fathers. The cause of this is the cheapness of the education that is afforded, which costs little more than a sixth of the amount paid

* The impatience and restlessness exhibited by heathen students in missionary schools while under Christian instruction were brought very recently before the Calcutta Missionary Conference, and how to obviate them and produce a better state of feeling formed the subject of inquiry. The Conference is composed of the clergy and laity of all orthodox portions of the Church.

in Government seminaries, as may be seen in the following table:—

Names of Schools.	Monthly rate of schooling fees.	Average rate.	Average rate of the fees of the Calcutta Missionary Schools.	Proportion which the fees of the Missionary Institutions bear to the fees of the Government Institution.
GOVERNMENT INSTITUTION.	Rs. As. P.	Rs. As. P.	Rs. As. P.	Rs. 1-10-4: Rs. 10 = one sixth nearly.
Presidency College*... ..	10 0 0			
MISSIONARY SCHOOLS.				
Institution of the Established Church of Scotland,				
College Department ...	3 0 0			
School Department, ...	1 8 0			
Ditto ditto	0 8 0	1 10 8		
Institution at Bhowanipore of the London Missionary Society.				
The four highest classes	1 0 0			
The next four classes ...	0 12 0			
The remaining classes ...	0 8 0	0 12 0		
Institution of the Free Church of Scotland,				
College Department, ...	3 8 0			
School Department, ...	1 8 0			
Ditto ditto	0 12 0	1 14 8		
Institution of the Church of England,				
College Department ...	3 0 0			
School Department ...	1 8 0	2 4 0		
			1 10 4	

* We are informed that the fee is to be increased to Rs. 12. If the pupil in the general department study also in the law department, he pays five rupees more, that is, Rs. 15 a month.

The fees of the Government colleges in the provincial cities and towns are less than in the metropolitan college, and this is likewise the case with reference to missionary schools, but except the Serampore and Ohinsurah institutions there are none attached to the missions of Bengal of the same grade as those in Calcutta, consequently no fair comparison can be made between these schools and the Government colleges located in their neighbourhood, which, by a numerous staff and ample pecuniary means, are able to give their pupils a thorough education in nearly every branch of learning. In the Dacca Hooghly, Kishnaghur, Berhampore and Patna

It is further argued that, even admitting education to be the legitimate work of ministers of the gospel located in heathen lands, the system generally adopted in the missionary schools of India is objectionable. Instruction is communicated not in the native, but in a foreign tongue. The vernacular of every country is almost as necessary to the great body of the people, as the food they eat and the air they breathe, and but little less serviceable in accomplishing the purposes of life. In the domestic and social circles, in friendship and estrangement, in peace and war, in work and play, in buying, selling, and getting gain, in marrying and giving in marriage, indeed in all the affairs of this world and as regards those of the next, it is the channel of thought. Though in Europe, at the universities and the public and private schools, Greek and Latin are taught, and a knowledge of them considered an essential part of a polite education, they are not made the medium of tuition, all instruction in literature, science and art, is given in the vernacular. If the zealous Protestants of England resolved to diffuse the doctrines of the Reformation in France by the means of schools, it is said, French would be employed in teaching the pupils; and if the Catholics of Spain laboured to bring Holland into the Church of Rome, Dutch would be used. If either adopted their own language, and not the vernacular of the country as the channel of communication, it would excite surprise. It is therefore asked, what satisfactory reason can be assigned for making a foreign tongue the medium of instruction in India?

As the weekly subscriptions of the husbandmen, the artisans, and the Sunday school children of Great Britain form a large portion of the income of missionary societies, the question is raised, is it a right appropriation of these offerings to devote them to the diffusion of scientific and polite learning that Hindus and Mahommedans may be prepared for University degrees? Is it in accordance with reason or Scripture to require the labouring poor, who live by the sweat of their brow, to contribute out of their scanty earnings towards the secular instruction of persons who are able to pay for their education themselves, some of whom ride to missionary schools in palanquins, gigs, and carriages?

Such, in substance, are the opinions of some gentlemen who take a deep interest in the spread of the Christian faith among

Government colleges the fee is 5 rupees, in the two highest classes of the school-department it is Rs. 3, and in the remaining classes it varies, we are told, from Rs. 2 to Rs. 1-8-0.

pagan nations, and contribute in a generous manner to the revenues of missionary societies. What can be advanced which may tend to modify these opinions ?

That the work which the Saviour assigned the apostles was preaching the gospel, and that by preaching they understood addressing on the momentous affairs of the soul all classes of persons in the cities, towns, and villages to which Providence directed their steps, must be admitted ; but their sacred calling did not interdict business of a secular nature. The little which is recorded of their lives makes this very apparent. St. Paul, in order that he might not be chargeable to his converts, followed the craft of tent-making, with Christian friends at Corinth who were engaged in the same occupation*. As it cannot be supposed he was less obedient to the instructions of our Lord than his colleagues, we presume that he did not think those instructions, either expressly or by implication, condemned the course he adopted, but believed, that plying a mechanical art to gain a subsistence and defray the expense of his travels, in order that without cost he might spread abroad the news of salvation, was approved by his Divine Master.

The justification of his course of action is found in the motive which influenced him to adopt it. This should be borne in mind in judging ministers who are engaged in the scholastic department of missions. The handicraft which the apostle followed was not his primary object, but made subservient to it ; nor is instruction in literature, philosophy, languages and science, the primary object of missionaries. Education in these branches is wanted and prized by the natives of India ; it is therefore given to secure their attendance, that opportunities may be gained of making known to them the doctrines of redemption.

The gospel and secular education are not opposed but friendly to each other ; the former is the divine instrument of evangelization, and the latter an important human auxiliary. Secular learning loosens the affections of the people from the ancient superstitions of the land. As mathematics, natural, mental and moral philosophy, literature and science are taught in the higher classes of missionary institutions, it may be reasonably supposed that not a few become respectable scholars. The education which they receive has the direct tendency of showing the folly of Hinduism, and the profound ignorance of its celebrated sages, so that a thorough change, respecting a religion which has been venerated from time immemorial, is eventually produced in the sentiments of a large portion of the pupils. They discover that

* Acts xviii. 3.

the principles of true science and the records of authentic history falsify the tenets relating to these subjects which are contained in their Shāstras. This detection of error in history and science leads them to suspect the truth of their own theology, to despise the dogmas of Brāhminism, and shake off the shackles which held their minds in bondage to a degrading and demoralizing superstition. Thus, with slow but sure step, they are led to abandon a religion, whose social and civil institutes stupify the understanding and harden the heart, whose pantheon contains personifications of every vice, and examples more destructive than the plague; so far the influence of such education is beneficial, it disposes the mind to receive truth instead of error on all subjects of human learning, and brings to light the gross absurdities of a system which were fully believed to be eternal verities.

Though now under the control of their parents, and therefore possessing very limited influence, ere long these young men will be placed in circumstances widely different, they will be the fathers and guardians of the next generation, and, infusing the knowledge derived from Western literature and science into the minds of their children, will cause the tide of opinion to run with an increasing swell against Hinduism and every kindred superstition.

Some good men, however, look to the future with forebodings of evil. As many educated Indian youths have renounced the religion of their fathers, and embraced no purer faith in its stead, they fear the country will be deluged with infidel opinions. In things respecting which Revelation does not enlighten our darkness, we can anticipate the future only by reading aright the history of the past, whose pages inform us that since the beginning of the world a nation of infidels has not yet existed; that there has been but one national attempt to rid the universe of God, and when only partially awoke from her delirium, France called back the Deity, and acknowledged not only His presence, but the duty of attending the solemnities of His worship.

A little attention to the workings of the human mind in liberating itself from the dominion of error, will enable us to ascertain the cause of educated Indian youths hesitating to believe the Bible. Guided by the lights of secular learning, they have been constrained to renounce the religion of their fathers; they therefore enter on the study of Christianity resolved to subject everything to the test of reason, and consider whatever rises above reason as being contrary to it. The powers which demolished the gigantic fabric of superstition, are applied to the examination of the Scriptures; and it is found that while reasoning is destructive to a belief in Hinduism, it is in some measure

an impediment to a reception of the gospel. Persons born and educated in a Christian land, and who have never left its shores, will hardly be able to realize this; because in one sense their religion has always, as it were, formed part of themselves; it blends itself with their thoughts, feelings and actions, their manners, customs and habits, their domestic and public life; pervades their literature, science, laws and government; is associated with their baptisms, marriages and funerals, and, in short, attends them from the cradle to the grave. The consequence is that the number of infidels is small, and most men, though not pious, reverence the Bible as a revelation from heaven, and dispense with many inquiries which a pagan is led to make in studying its pages. On the other hand everything is foreign to the associations of the latter; each step he takes, he asks himself the questions, what is the reason of this, on what evidence is it founded, and how can it be proved? And as there are some things in the gospel above reason, though not contrary to it, that understandings of the highest order cannot grasp, with reference to which the mind of a Newton and that of a ploughman are on a level, and that must be received, if received at all, with the docility of a child, the sacred volume appears to some educated Hindus as it did to some learned Greeks, and their rejection of the scheme of redemption which it propounds has the same origin,—pride of intellect, and pride of heart.*

Infidelity however is rather a transition-state than one of a permanent character, nor is it peculiar to this country; many persons in Europe pass through the regions of doubt and unbelief to a cordial reception of the gospel, and some who impugned the Bible are now its able defenders. Similar changes take

* Among the mysteries of the Christian religion, we place the things of an immortal life; the Trinity; the Godhead, the incarnation and vicarious sacrifice of the Redeemer. Can we think of God, who laid the foundations of the earth, and spread out the heavens as a curtain, who gave birth to the universe, and life to all the creatures that people its innumerable regions, taking the form of a babe, and lying in a manger, and say that we are able to comprehend it? Can we think of the incarnate Deity, feeling in the human nature which he assumed the effects of distress and poverty, while at the same time as a Divine Being, an infinite plenitude of riches and happiness existed within him;—can we see the Saviour bleeding on the cross, and witness the deep agony of his soul, while, even amid these unexampled scenes of pain and woe, as God, a tide of unbounded and uninterrupted felicity glowed within him, and say that we are able to understand it? We cannot do otherwise than agree with the sentiment of the apostle, 'without controversy great is the mystery of godliness, God manifest in the flesh.'

place around us, and will continue to do so. The forces at work in native society are carrying the people, in a way more or less direct, towards Christianity; the progress is slow, and to themselves perhaps imperceptible. One rite after another of their ancestral faith they petition the legislature to abolish. At their earnest prayer, the immolation of widows was prohibited. According to the official returns, the annual average number consumed in British India then amounted to 650, but probably the statistical tables contained only a moiety of the murders; doubtless many, without the cognizance of the magistrates, ascended the pyre. Taking however the lowest estimate, and multiplying it by the years that have elapsed since 1829, the result is the preservation of twenty-four thousand human beings, and if we think of the sorrow and agony they and their families would have experienced had they perished in the flames, we can form some conception of the suffering which has been prevented by this statute.* A law was asked for and passed to terminate the suffering, misery, and crime arising from enforced widowhood. A petition, presented the other day by the most influential Hindu gentlemen, residing in the metropolis and its vicinity, and which bears 21,000 signatures, prays for the abolition of Kulin polygamy† The educated classes now numbering many thousands, are either Vedantic or intuitionist Brahmoists, the former renounce Puranic idolatry, and the latter set aside the authority of the Vedas. Whither all these changes tend, he who has mingled much in native society, and carefully read what the respective parties have published in exposition of their views, will be at no loss to determine. In their speeches, lectures, books, sermons and manuals of prayer he finds large importa-

* Suttee was abolished by Regulation xvii of 1829. In 1828-29, of the 463 Suttees which took place, 420 occurred in the lower provinces, or Bengal, Behar, and Orissa; and of these, 287 in the Calcutta division alone. The following is the official return of Suttees from 1815 to 1828 :—

Years.	...	...	1815	1816	1817	1818	1819	1820	1821	1822	1823	1824	1825	1826	1827	1828
Divisions.																
Calcutta	...	...	253	289	412	544	421	370	372	328	340	373	398	324	337	308
Dacca	...	...	31	24	52	58	55	51	52	4	40	40	101	65	49	47
Moorsheadabad	...	...	11	22	42	30	2	21	12	22	13	11	21	8	9	10
Patna	...	...	26	29	49	57	46	62	69	70	49	42	47	65	55	55
Benares	...	...	45	65	103	137	9	103	114	102	121	83	55	48	43	33
Barcilly	...	...	1	13	19	13	17	20	15	16	12	10	17	8	18	10
			376	412	707	839	651	597	634	583	576	572	630	518	517	463

Total of the 14 years 9,104
 Yearly average 650½
 The probable number of lives preserved by the passing of the Act is 24,050.

† The petition was presented on the 19th March, 1866.

tions from the sacred volume. Phrases, opinions, sentiments, moral rules, and trains of reasoning but little altered in language, taken from the source of all good, frequently meet his eye, and numerous instances come under his notice of similar homage paid to excellent Christian compositions of human origin. Thus piece by piece Hinduism is abandoned, from which to predicate the relinquishment of the whole needs not the vision of prophecy. The present foreshadows the future, and in the actual state of things there is much of an encouraging nature. An intelligent perusal of the poems of Milton, the pages of history and of other books, included in the University course, necessitates a frequent reference to the Christian Scriptures, and the effect on many of the advanced pupils is a growing respect for the religion which they reveal. Whatever difficulties concerning the mysteries of the gospel they may experience, most, probably all, admire the character of the Redeemer and the preceptive portions of his word. As tending to confirm the above, we may mention that but the other day in a large assembly, composed of educated native gentlemen, convened to discuss the character of celebrated persons; one of the audience rose and said. 'I have heard much about Confucius, Socrates, Plato and other sages, but regarding the best, the wisest, and the greatest person that ever lived I have not heard a single word; nothing has been said about Jesus Christ.' Thirty years ago such a statement would not have been tolerated, it would have raised a storm of anger in every breast, the speaker would have been hooted, expelled from caste, and his prospects ruined for life; but since then a change has been wrought. In every part of the hall he was greeted with cheers, clapping of hands, and stamping of feet, indicating that the opinion was entertained by all, though none besides himself had given expression to it.*

* Since the above was written the following has appeared in the *Friend of India*:—"Baboo Keshub Chunder Sen, the apostle of the Bramhos, lately delivered an extempore lecture to his countrymen in the theatre of the Calcutta Medical College on 'Jesus Christ—Europe and Asia.' He sketched the state of the world at the birth of Christ, the life and death of the Saviour, and the progress of the Church till the Reformation and of modern missions thereafter. As a Brahmo, 'avowedly differing from the orthodox opinions of popular Christianity,' he used language like that of Channing and the better class of Unitarians. He said,—'Humanity was groaning under a deadly malady and was on the verge of death; a remedy was urgently needed to save it. Jesus Christ was the necessity of the age: he appeared in the fulness of time. It was from no selfish impulse, from no spirit of mistaken fanaticism, that he bravely and cheerfully offered himself to be crucified on the cross. He laid down his life that God might be glorified. (Hear, hear.) I have always

It is objected to the system generally adopted in missionary schools, that instruction is communicated not through the vernaculars but in a foreign tongue.

How the system originated and to what degree missionaries are responsible for it; it may be well to inquire. The education formerly patronized by the Government of India was of an oriental character, Arabic and Sanskrit were the medium of tuition, English and the vernaculars may be said to have had no place in it, they were so little regarded. The leading subjects taught were false history, false geography, false chronology, false science, and false philosophy; and if we say false religion and morals we shall probably be correct. Unwittingly the State spent its treasure to thicken darkness and stereotype error. The more the pupils advanced, the less they knew, and the less they were fitted for the duties of life.* Deeply impressed

"regarded the cross as a beautiful emblem of self-sacrifice unto the glory of God, one which is calculated to quicken the higher feelings and aspirations of the heart, and to purify the soul, and I believe there is not a heart, how callous and hard so ever it may be, that can look with cold indifference on that grand and significant symbol.' (Applause). Referring to the martyrs he said,— 'It is such examples of martyr devotion which are calculated to dispel from our minds all cowardice, fickleness and inconsistency, and to make us feel that truth is dearer than life itself.' (Applause.) In vivid terms he praised Luther and condemned Popery. He used such language as this:— 'Is there a single soul in this large assembly who would scruple to ascribe extraordinary greatness and supernatural moral heroism to Jesus Christ and him crucified? (Applause.) Was it not he who by his wisdom illumined, and by his power saved a dark and wicked world,—was it not he who has left us such a priceless legacy of divine truth, and whose blood has wrought such wonders for eighteen hundred years,—was not he above ordinary humanity? (Cheers.) Blessed Jesus, immortal child of God! For the world he lived and died. May the world appreciate him and follow his precepts.' (Applause.) If even a hundred of the Brahmoists who applauded these sentences are honest men, Brahmoism has passed far beyond Theodore Parker, and is near the kingdom of Heaven. The speaker we believe to be sincere. Of how many of his followers can we say the same?" *Friend of India*, 24th May 1866, p. 614.

* In his celebrated minute, dated the 2nd of February 1835, Macaulay says: "A petition was presented last year to the Committee by several ex-students of the Sanskrit College. The petitioners stated that they had studied in the college ten or twelve years; that they had made themselves acquainted with Hindu literature and science; that they had received certificates of proficiency: and what is the fruit of all this? 'Notwithstanding such testimonials,' they say, 'we have but little prospect of bettering our condition without the kind assistance of your Honourable Committee, the indifference with which we are generally looked upon by our countrymen leaving no hope of encouragement and assistance from them.' They, therefore, beg that they may be recommended to the Governor General for places under the Government, not places of high dignity or emolument, but such as may just

with the evils inflicted on the country by such an education, and the little real good, which under the most favourable circumstances could ever be expected from it, some of the members of the General Committee of Public Instruction advocated a sweeping change,* but others, who were oriental scholars, deprecated the least innovation.† In 1835 the controversy, which

“enable them to exist. ‘We want means,’ they say, ‘for a decent living, and for our progressive improvement, which, however, we cannot obtain without the assistance of Government, by whom we have been educated and maintained since childhood.’ They conclude by representing very pathetically that they are sure that it was never the intention of Government after behaving so liberally to them during their education, to abandon them to destitution and neglect.

“I have been used to see petitions to Government for compensation. All these petitions, even the most unreasonable of them, proceeded on the supposition that some loss had been sustained—that some wrong had been inflicted. These are surely the first petitioners who even demanded compensation for having been educated gratis,—for having been supported by the public during twelve years, and then sent forth into the world well-furnished with literature and science. They represent their education as an injury which gives them a claim on Government for redress, as an injury for which the stipends paid to them during the infliction were a very inadequate compensation. And I doubt not that they are in the right. They have wasted the best years of life in learning what procures for them neither bread nor respect. Surely we might, with advantage, have saved the cost of making these persons useless and miserable; surely, men may be brought up to be burdens to the public, and objects of contempt to their neighbours at a somewhat smaller charge to the State. But such is our policy. We do not even stand neuter in the contest between truth and falsehood. We are not content to leave the natives to the influence of their own hereditary prejudices. To the natural difficulties which obstruct the progress of sound science in the East, we add fresh difficulties of our own making. Bounties and premiums, such as ought not to be given even for the propagation of truth, we lavish on false taste and false philosophy.” The minute, from which the above extract is made, was written by Macaulay in his capacity of Legislative Member of the Supreme Council, when the minutes of the General Committee of Public Instruction came before the Council.

* That such a change would be cordially welcomed by the people was indicated by the flourishing state of the Hindu College, which had been founded to meet the growing demand for English education. The Hindu College was established in 1816 by the native nobility and gentry and a few English gentlemen. The institution of the Church of Scotland was established in 1830.

† The Committee consisted of ten members, divided into two parties of equal strength; five were Orientalists, and five Anglicists. The Orientalists were the Hon’ble H. Shakespear, Messrs. H. Thoby Prinsep, James Prinsep, W. H. Macnaghten, and T. C. C. Sutherland, Secretary to the Committee. The Anglicists were Messrs. Bird, Saunders; Bushby, Trevelyan, and J. R. Colvin. Though appointed, on his arrival in India, to be the President of the Committee, Macaulay declined to take any part in its proceedings till the decision of the Governor General was pronounced on the important questions laid before him.

had been long and very ably conducted, was closed. Both parties wrote elaborate minutes, stating at great length their opinions, which were submitted to the Governor General, Lord William Bentinck, for his decision, who, on the 7th of March of that year, pronounced in favour of a radical alteration in the system. It was considered advisable in a political and intellectual point of view to teach English to the people of India, and mainly rely on it as the medium of instruction. This pre-eminence over other languages was given to it, because it is the language of the governing body, and, as the richest repository ever known of learning in all its varied branches, occupies a position in relation to the vernaculars of the country, similar to the position which at one time Greek and Latin occupied in relation to the vernaculars in Europe. However, in thus using it as the means of importing to the East the treasures of knowledge from the West, no discouragement of the cultivation of the vernaculars was contemplated. It was hoped, that many youths on completing their studies would go forth as instructors to their countrymen, and, imparting to them in the native tongue the rich intellectual stores of other lands, become the instruments of diffusing abroad the inestimable benefits of a sound education, and of creating in the course of time a vernacular literature of a highly useful character. * It was believed that in this way the learning which was cultivated in the capital, would rapidly spread to the extremities of the empire. But these laudable objects do not appear to have been practically kept in view. Though the youths instructed under the auspices of the Government are intended to be conductors of knowledge to the masses of the people, yet those who have become eminently fitted for the important office, have not always been encouraged to enter on it, but have been sometimes honoured with places in more lucrative branches of the public service, for which they were less qualified. Thus, by a benevolent but unwise use of patronage, the State has defeated its own educational policy, and retarded the intellectual advancement of the country. Towards enriching Urdu and Hindi, the vernaculars of Upper India, with the abundant wealth which exists in the languages of the West, up to the present

* See Macaulay's minutes of the 23th of October 1835, and the 30th of August 1837; Sir Charles Trevelyan's Book, published in 1838, 'On the Education of the People of India,' pp. 37, 86; and the address of the Hon'ble Mr. Bethune to the Young Men of the Dacca and Kishnaghur Colleges, on the occasion of the Annual Distribution of Prizes. Mr. Bethune was the President of the Council of Education in the years 1848-49, 1849-50, and 1850-51.

time little has been done.* In the province of Bengal, translations, good, bad, and indifferent, have been made of many English books, and something more than elementary instruction can now be given in the native tongue; still, making proper allowance for the difficulties which have presented themselves, what has been done in vernacular education, considered as the work of a quarter of a century, is very little indeed, and when contrasted with what yet remains to be accomplished, is insignificant. To prove that the country is in a very backward state, we have only to compare the educational statistics of Europe with those of India, as presented in the following table, which shews the proportion of children receiving instruction:—

In Prussia it is found to be one in every	6·27
„ Scotland „ one „	8·11
„ England and Wales one „	7·7
„ Holland „ one „	8·11
„ France „ one „	9
„ Bombay „ one „	113
„ North West Provinces one „	189
„ Punjáb „ one „	331
„ Bengal „ one „	800

Contrary to expectation, the system pursued has tended to discourage among European masters the acquisition of the native languages. That they should learn the vernacular, even though it be not employed as the medium of tuition, that it would enable them to hold closer intercourse with their pupils, and make them more efficient and useful, one would think could hardly admit of any reasonable doubt; yet some good men have considered its utility not an adequate compensation for the time and labour of acquiring it, and counselled young missionaries, who were engaged in the study of it, ‘to throw it overboard,’—to quote their own energetic words. This erroneous opinion has however met with no countenance in the Bombay and Nagpore missions. There the ministers engaged in the work of education have always been more or less distinguished as vernacular preachers and oriental scholars.†

* See the Reply of the Hon'ble Donald Friell McLeod, c. B. Lieutenant Governor of the Punjab, to the Address of the Native Nobility and Gentry of Lahore and Umritsur.

† A writer in the *Friend of India*, July 6th, 1865, p. 776, states that vernacular preaching has been less common with the European members of the Calcutta and Madras Free Church Missions than with those of Nagpore and Bombay, either because English work was more immediately required, or the ministers located there had no gift for languages. The first reason is improbable, the second is inadmissible, and casts, unintentionally no

Though the English language was thus introduced into the schools and colleges of India, and made the chief medium of instruction by an order of the Governor General in Council, the origin of the change must be sought elsewhere. The order did not create, but was an expression opportunely made of a desire for the literature and science of Europe, which the higher and middle classes of the people had long cherished; had they been otherwise disposed, it would have become a dead letter. If they were somewhat influenced by self-interest, it can hardly be a matter of surprise. In all nations there are, it is true, a few who accumulate knowledge from an ardent love of it, and with no ulterior object in view; in countries which have been long prosperous and in a high state of civilization, the number of such persons is gradually augmenting; but this noble feeling is often blended with one of a less elevated character, and learning is pursued as the means of worldly advancement. The most remuneratory knowledge in India is an acquaintance with the English language. In the legislative councils, in diplomacy and politics, in the fiscal and judicial courts, in the police, and at the bar, in the art of medicine, in the scholastic, public works, commissariat, railway, post office, and telegraph departments, in the revenue and trigonometrical surveys, and in every branch of trade and commerce, its use is daily extending, and by lucrative places, the acquisition of it is substantially rewarded. The monetary profit which it yields accounts for so many thousands studying it.

As the State and missionary societies have different ends in view, from the partial failure of the former to accomplish its designs the failure of the latter does not necessarily follow. The object of the state in establishing schools is to educate the people, and this can never be thoroughly and extensively done, except through the vernaculars. Education is the secondary object of missionary societies in establishing schools, and made subservient to their primary one, which is to make the people Christians. The secular education which the natives want and prize, is given to secure their attendance that opportunities may be gained of imparting Scriptural knowledge to them. In every institution, an hour a day is devoted to the Book of Life and the scheme of redemption propounded in its pages.

doubt, a reflection not in the least merited. The late Mr. Macdonald knew Bengali, and the late Dr. Ewart preached in it with facility. Indeed, from the commencement of the Calcutta and Madras Scotch Missions to the present day, they have been conducted by men not more eminent for their piety and zeal than for their talents; many of them have been excellent classics, capable of learning not only the vernaculars of India but of making every other acquisition they might deem necessary.

Some persons consider the period too limited, but those who have had any experience in the instruction of youths in India, pronounce it sufficiently long. Thus many thousands, belonging to classes that seldom hear the vernacular preacher, and who might have continued in pagan or atheistic darkness, are brought under the influence of Christian teaching. If among them, as among the ancient Jews and Greeks, the doctrines of the cross and the strict rules of an exalted piety be not always cordially approved, and something like antipathy be exhibited, it must be remembered that this is the case, and perhaps not less frequently, when the gospel is proclaimed from the pulpit, or in the streets and lanes of the city, which proves that however modified by circumstances, human nature in its great characteristic features is the same in every country and age, and requires a divine power to create it anew. This spiritual, like the material creation, is the work of God, and over the educational, as over the preaching department of missions, he has stretched out his hands, and what is a matter of controversy among men, he has owned and blessed.

The gifts of the labouring poor to foreign missions flow from that self-denying piety which led the widow, mentioned in the gospel narrative, to cast her mite into the temple-treasury, and to devote them to any other than the purpose for which they are laid on the altar would be sacrilege in its most criminal form. But if common sense and a spirit untinctured with bigotry be allowed to guide evangelistic efforts, a temptation to such misappropriation can never present itself. Secular learning will be the means not only of destroying error and spreading abroad the news of salvation, but will cease to be a monetary burden, and may even yield a profit. If all sections of the Church crowd to the city or town where success has been realized, and, in numbers out of proportion to the real wants of the people, open English schools, the cost will be very great. Pupils will be drawn from the long-existing flourishing institutions to fill the new ones, and as this can hardly be done by affording a superior education, it must be accomplished by a reduction of fees, which are already much too low. Consequently, though there be no more scholars, the outlay may be increased a hundred-fold. But if missionary societies rise above this so-called holy rivalry, and commence schools only where they are needed,—and there are thousands of such localities,—the fees will then admit of being augmented at stated periods, and in the course of time sufficient income will be obtained to defray most, if not the whole, of the charges. As in the comparative smallness of the fees lies the inducement of natives

to attend religious institutions, they must be regulated by the pecuniary means of the middle and poor classes, and can probably never exceed half the amount paid in Government seminaries; they are now, as mentioned in a previous page, little more than a sixth. If a few boys, sons of wealthy parents, come to be educated, and instead of walking ride in carriages, they cannot be rejected, nor, with prudence can any financial rule, which is in force, be altered or rescinded to suit their special case, and as the object contemplated is to bring, if possible, all ranks under the influence of Christian teaching, their presence is an event to be welcomed rather than deprecated.

We are however far from sympathising with the strange but too common opinion that religion is the dull, cold, inanimate thing produced by drill exercise in catechisms and other formulas. True piety is that nobleness which inspires the soul to struggle heavenward, which against sin in all its forms wages perpetual war, and in holiness and disinterested benevolence reflects the image of the Deity. But though of divine origin, it is destined to grow and flourish by human instrumentalities, and among these the first place must be assigned to preaching,—the place which was given to it in the ministry of the prophets, and in that of our Lord and his apostles. It is an institution which for more than three thousand years has been found suitable to all communities, tribes and nations, whatever may have been their errors, morals and capacities, and whether in a high or low state of civilization. But some persons who admit its general, question its universal adaptation. They say, ‘we have long come to the conclusion that it is of no use preaching to the adults of Bengal, all efforts should be directed to the education of the young.’ Such attacks on vernacular preaching are generally made by persons who are ignorant of the native language and can hold no direct intercourse with the people; consequently the opinion which they entertain of them is not entitled to much deference. Instead of being guided by it men of reflection will ask; if, while untaught a foreign tongue and the way to refute the sophistry of Voltaire and Paine, the Islanders of the South Seas, the Malagasy, the Esquimaux and Hottentots comprehend, believe and appreciate the gospel, and even die for it when storms of persecution overtake them, is it probable that the adult inhabitants of this portion of the world are incapacitated for receiving it? To the supposition facts lend no countenance whatever. In the last decade, the Burisal mission, which is a preaching one and had only 115 children under instruction, received into the Church on a profession of piety corroborated by a devout life 391 members; the educational missions in

Calcutta, whose pupils aggregated 3,198, realized, during the same period, an average increase of 39 communicants, but little more than a tenth of that of Burisal. * These facts prove that the religion of the Bible is adapted to adults not less than to the young, and to the circumstances of the peasantry as well as to the condition of the rich. '*To the poor the Gospel is preached*' has been the glory of the Church in every age, and sad will it be for India if school-teaching be permitted to supersede the Christian ministry.

Reference has been made to Burisal merely to refute an opinion, which, if allowed to pass unnoticed, might greatly mislead people in England, but instead of approving in the least degree of the educational state of the mission, we think it a disgrace to the home authorities of the Baptist Society. Lest from what has been said a wrong estimate should be formed of the usefulness of Calcutta schools, justice requires it to be stated that Burisal, judged by an increase in the number of communicants, is the most prosperous mission in Bengal.† If we turn to other preaching missions, it will be found that some of them have not obtained in the last decade the number of

MISSIONS.	BOY'S SCHOOLS.			GIRL'S SCHOOLS.		Total scholars of each mission.	Aggregated scholars of the three missions.	Admitted into the Church in ten years.	Average of admissions
	Vernacular Day Schools.	Boarding Schools.	Anglo-Vernacular Day Schools.	Day Schools.	Boarding Schools.				
	PUPILS.			PUPILS.					
CALCUTTA MISSIONS, Established Church of Scotland	35	...	706	160	40	941	...	9	...
Bhowanipore mission, London Society ...	50	2	585	150	60	847	...	44	...
Free Church of Scotland	...	...	1200	156	54	1410	3198	64	39
BURISAL MISSION ...	60	...	...	30	25	115	...	391	...

See Statistical Tables of Missions in India, Ceylon and Burmah, at the close of 1861, pp. 11 14, by Rev. Dr. Mullens.

† The very great prosperity of the Chota Nagpore mission has not been adduced; the hill-tribes and the people of the plains being of different religions, no fair comparison can be instituted as to the success of missions located among them.

converts vouchsafed to scholastic institutions in the metropolis. Indeed, if an impartial view be taken of the whole of India, it will be proved that educational and preaching missions have realized nearly an equal measure of success ; in some districts the former have been more blessed, and in others the latter. The greatest mistake ever made is to regard them as antagonistic ; they are friendly, and, in a country like this, indispensable to each other. Besides good vernacular schools in the surrounding villages, every mission located in a city or town should have an Anglo-vernacular institution of a high grade. The establishment of a mere elementary school in the neighbourhood of superior ones, conducted under the auspices of the State or of private gentlemen, will not answer even in the most remote degree the object contemplated by missionary societies. That object is to bring boys and young men under the influence of Christian teaching, hoping it may be blessed to their conversion, but, as both Hindus and Mohammedans come to missionary schools to be prepared at a small expense to fill lucrative situations and rise in life, and have nothing of a higher character in view, their attendance cannot be secured, without giving them, in addition to religious instruction, the secular education which they want and prize. This is the principle on which missionary schools were at first established, and on which they continue to be conducted. It is, it will be said, the principle of expedience ; this is readily admitted, but was it not on the same principle that St. Paul worked at tent-making in the city of Corinth, and if in his case the labour were dignified by the motive which led him to resort to it, is it not allowable to the clergy of the present day to impart secular knowledge to gain opportunities of speaking on the glorious things of an immortal life ? How inconsistent to praise the apostle, and in the same breath blame those who are animated by his spirit !

If acting on the advice of their sage counsellors, missionary societies were to sweep away all their educational establishments,* what would be the consequence ? The State deems the giving of sacred instruction not within its province, and towards the respective religions of the country adopts a neutral policy ; † there are few, if

* In 'A Plea for Indian Missions', an address to the Missionary Association of the University of Aberdeen, January 30, 1864, by Alexander Forbes, Esq. A. M. printed at the expense of an elder of the Free Church, and sent to every minister of that community, this counsel is given to the Scotch Presbyterian Missionary Societies.

† We do not mention this as a reproach to the State, for we think the policy wise for India, while we doubt not that by its own divine energy Christianity will make its way to the ends of the earth, with or without the atronage of human governments.

any, private schools for natives, where the doctrines of the Bible are taught, so that if missionaries leave the field, education, on the character of which the future well-being of India so much depends, will be consigned to secularism, paganism, and infidelity. Those who look at the war from a distance, which is here waged between Christianity and the powers of darkness, may deprecate this or that branch of the army, recommend its retirement and a complete change of tactics, but veterans, who have grown grey in the service, consider every branch requisite to a successful issue of the conflict, and will continue, till victory be achieved, to face the hosts arrayed against them, little influenced by the counsels of drawing-room soldiers. In every age of the world, some well-intentioned men have opposed great undertakings, and like the Scotch elder, who earnestly endeavoured to fill the clergy with his own apprehensions, thought they did God service. When missionaries laboured among the Druids of ancient Britain, among those who watched their course there were doubtless a few who despaired of success and communicated to others their forebodings, but the croaking which they heard around them did not damp the zeal or chill the hopes of the missionaries, they worked on, and what resulted? a bloody and potent superstition was effaced from the memory of the nation, and is now buried in the dusty tomes of antiquaries. A similar fate awaits the paganism of India, and the signs of the times indicate its approach; the day will come when it will be a thing of the past, and as little known as the worship which our fathers offered under the wide-spreading oak.

- ART. II.—1. *The Gazette of India Extraordinary, Calcutta, Friday April 29th, 1864, and July 1st, 1864.*
 2. *Statement of objects and reasons and Report of Her Majesty's Law Commissioners, dated 23rd June, 1863: idem.*
 3. *Sir Erskine Perry on Judicial Reform.*

AT a time when so much has been written or said of our law courts in India, of the proposed introduction of the Bill of 1864, and of the new Indian Code, we shall make no apology for entering on a very brief discussion of the subject. A discussion on law can seldom be interesting, unless to those who take a part in its administration: and to a certain extent a writer on a subject of this nature writes at a disadvantage. The art which above all other arts makes other subjects popular is denied him,—that art which is used so largely by eminent writers, which in the hands of Mr. Carlyle can invest the most prosaic characters with something of interest, and whereby Mr. Ruskin can infuse something of poetry in his description of an ordinary sunset, in the ripple of a stream, or the dusky shadows of a forest. Pictorial description or word-painting is entirely out of place in a legal disquisition. Nevertheless at a time when the subject of Indian judicature, whether by Her Majesty's Law Commissioners, or by the memorandum of Sir Erskine Perry, or by the discussions of the Indian press, has been brought so prominently before the public, perhaps comments even on a professional subject may not altogether by our readers be considered out of place. Attempts besides Sir Erskine Perry's, *ab extra* as well as *ab intra*, have been made, and suggestions have been offered for remedying some of the most glaring defects of the present system; and while during the next decade by the recognition of legal professional talent in India much good may be anticipated in the way of reform of our Mofussil courts; the free discussion of principles will, we trust, give rise to a clearer perception of what is absolutely demanded for their improvement.

It ought to be remembered that the civil jurisprudence of this country, like international law, or like the common and equity law of England, is in a nascent state. It is constantly in process of formation. New cases are decided; fresh precedents are added; its old principles are sometimes extended or restricted in their application. Regulation III of 1793, the basis for nearly a century of civil procedure, in India, is now

inapplicable. And indeed the India of 1793 was very different from the India of 1866. The time has come when Indian law, to meet the requirements of Indian wants, must amplify itself; and as the interests of large classes, who are not natives, become affected, the narrow law of the regulations must expand themselves into the broader principles of English law.

For a number of years past the Acts of the Legislative Council in India, like the Prætorian Edicts of the Roman Emperors, or like the Acts of our own Parliament, (to use the language of M. Hugo,) have "furnished the salutary means "of perpetually harmonizing the legislation with the spirit "of the times;" but this to a certain extent is impracticable now. The number of Acts has multiplied. The code has become too bulky. The expositions of law-officers are no longer permitted for the guidance of the courts on intricate or confused points of Mahomedan or Hindoo law. Act VIII of 1859 and Act XXXIII of 1861 has given to the courts of civil jurisprudence an uniform Code of Civil Procedure. The want of a code of substantive civil law was felt, and in commencing the framing of that code, Her Majesty's Government has not allowed the opportunity to pass which presented itself. Thus, while the new Code of Civil Procedure will consolidate all the previous laws which have hitherto constituted the rules of civil procedure in India, the Civil Code will place in the hands of its judicial officers those principles of civil law which should apply equally to all classes in this country. With the expansion of commerce, with the influx of foreigners into India, it is found that cases arise in which foreigners are parties to suits, and in which it is necessary to consider the legal institutions of other countries. In such cases a law restricted in its application simply to the customs or *lex loci* of this country becomes useless. A broader law is necessary; and those wider principles which are embodied in the code of all nations—the *jus gentium*—must by the Commissioners be made to modify or enlarge the "*jus civile*" for the Indian Empire.

That up to the present Indian Judges have had no substantive law whereby to be guided, must be regretted. Where Indian customs and the *lex loci* were concerned, the futwabs of the law officers were considered to be sufficient for the purposes of substantial justice; and where those were not to be had, even in the higher appellate courts, the Judges too often found in the principles of equity a remedy for the deficiencies of substantial justice. The massive laws of the old Regulations were becoming obsolete. To the layman they were closed books. To the great majority

even of judges in India administering the law, they were found to be overwhelmed by so great a weight and variety of new laws, that too often, instead of referring to those laws, decisions were based on principles of conscience or of equity. Finding a parallel in the annals of ancient Rome, the heavy and uninviting folios of the old Regulations and Acts might have been compared to the three thousand brass plates,—the Acts of the senate and people, which had confused and disfigured the simple majesty of the law of the twelve tables, enacted by the decemvirs.

The laws of a nation form the most instructive portion of its history, and in the annals of British India to those interested in its civil jurisprudence no year has been fraught with more good than that which gave to India its present Code of Civil Procedure. That code dates from the year 1859. It consolidates and amends the previous laws relating to the procedure of the courts of civil judicature in India. It repeals most of the Regulations and Acts which from 1793 had formed the basis of civil jurisprudence and procedure in India. It is now in force throughout nearly all British India. On its first institution it did not affect the jurisdiction of the Courts of Small Causes. But the local Governments are now empowered to extend to them any parts of this code with certain reservations. The code in fact now forms the law of India in all cases of civil procedure; in all regular and miscellaneous civil suits; and in all civil actions whether real, personal, or mixed.

A civil suit is, properly speaking, an action instituted in a court of civil judicature for the enforcement of some right, for the adjudication of some claim, for the adjustment of some demand, or for the redress of some civil wrong, which can only be obtained by the intervention of a civil court. And a regular civil suit is where the action is based on those general principles of law which are enunciated in this code, and is not the subject of any special enactments or of any special or provisional laws. Actions at law are real, personal, and mixed:—“*actionum quedam sunt in rem, quedam in personam, et quedam mixtæ.*” Real—for the specific recovery of lands and tenements: personal—for the specific recovery of personal damages, goods, and chattels, or for breaches of contract; mixed—such as appertain to both, and are reducible to either one or the other class.*

Under this code cognizance will not be taken in the civil courts in matters of a criminal nature, except those which arise as damages out of real or personal actions. Such actions are of

* Co. Litt. 284. Sar. Prin. of Com. Law, p. 1.

the nature of trespass, trover, detinue and libel, and embrace those which are of the nature of personal torts or wrongs, or of injuries to personal property.* Neither are cases enumerated in Act X of 1859 and Act XIV of 1863, the rent laws, cognizable under this code.

Seven years have elapsed since the date of the code, and as in the contemplation of the Legislature periodical revisions were acknowledged to be necessary, so in 1864 the proper moment seemed to have arrived to supply omissions, to remove doubts, to rectify errors, and to adopt the special provisions and enactments of the code to altered circumstances. Since 1859, writes Mr. Harington,† “great changes have taken place in the judicial agency of the country, as well as in the substantive criminal law in its relation to the administration of civil justice. Acts committed in connection with the processes of the civil courts, which were not offences before the passing of the Indian Penal Code, have by that code been made offences and are now punishable by the criminal courts.” The Supreme and Sudder Courts have been abolished. The High Courts in the Presidency towns and in the North-West Provinces have been established by royal charter; and with the exception of their testamentary, intestate and matrimonial jurisdiction, this code regulates their procedure.‡ The Judges may be selected from among barristers or members of the service, Principal Sudder Amceens, or uncovenanted Judges of Small Cause Courts. The courts frame rules of practice, and superintend the working of subordinate courts. Under the recommendation of the Law Commissioners an admission as pleader is given to barristers, advocates, vakeels and attornies. The office in the Supreme Courts corresponding to the Master of equity has been abolished. Small Cause Courts have been increased, and their pecuniary jurisdiction enlarged.

Under changes so many, a simple and uniform code of civil procedure was felt to be a desideratum. And there can be no doubt that the introduction of Act VIII of 1859, on which the present Bill has been modelled, has supplied a want which had previously been felt; and corrected a defect which was acknowledged to have existed under the old system of Indian civil jurisprudence.

The Bill of 1864 has slightly modified some of the principles of the existing Act. The Mahomedan law-offices have been abolished.

* Sec. VIII Principles of Punjaub Law. Nagpore.

† Gazette of India Extraordinary, April 29, 1864.

‡ 24 and 25 Victoria, cap. civ.

But under the provisions of this Bill, in issues of law, in which nice points of Hindoo or Mahomedan law arise, the courts are empowered to obtain the testimony of skilled persons. Under this Bill the courts may enforce without a suit bonds and written obligations when registered under Section LII of Act XX of 1866 for the registration of assurances. Summonses may be served on witnesses confined under criminal process. The Sections which affect contracts under Act VIII of 1869 and the execution of decrees for their performance have been slightly modified.

Such are a few of the leading points in which the Bill of 1864 differs from the present Code of Civil Procedure. It has been objected that the new Bill, like the Code of 1859, will necessitate in carrying out its rules of procedure much clerical work which must be done by the Judge himself. Under its rules of procedure a very artificial structure of language in the formal orders recorded will have to be used: and with regard to the formulæ of procedure, proficiency will only be gained by labour and drudgery. Much work, which should be done by the clerk of the court and which was performed before by native writers, will now have to be performed by the Judge. The objection is scarcely tenable. We allow that no civil case can be completed under this Code without much of that patient drudgery which is the legitimate work of a clerk, and which would be required in copying Greek Iambics. But a little amount of additional labour would overcome this, and the objections would only be maintained by those who have no inclination for work. Anything under such circumstances would be an excuse for indolence. From time immemorial the tools have been doomed to bear the blame of the unskilful artizan. Who does not remember the clever illustration of Persius, of the sluggard in his third Satire, when incapacitated by rich Falernian, in the pursuit of his morning studies, finding fault with his pen and ink?

Before reviewing the first chapter of the Indian Civil Code, the law of intestate and testamentary succession, we may venture to allude to the abstruseness of Indian law, which has up to the present made it a statute book uninviting to the general reader, and to those interested in its administration a collection of decided cases. We trust as the code is finished, as digests and commentaries are written, the study of Indian law will become more popular. To the writer of this review no subject appears to be more interesting than the study either of ancient or modern jurisprudence. The Commentaries on the laws of England form an essential part of every gentleman's library. The finest legacy

left to the French nation by one of its most gifted authors was undoubtedly the *Esprit des Loix* by Montesquieu. "The vain titles of the victories of Justinian," writes Gibbon, "are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument." No portion of the writings of Cicero are more valuable than those which illustrated the jurisprudence of his own country. The works of Virgil and Horace have amused or instructed, but the principles of Tribonian, and the writings of the Scævolas or of Servius Sulpicius have affected, years after their death, the fortunes and interests of all who lived under the action of the Roman laws. The Pandects and Institutes have formed the basis of civil law in Italy and France. The code of Napoleon at the best is a compendium of the rules of Roman law. The international and civil law of other European States has been based on that law; and in the words of Mr. Maine "the Roman law is fast becoming the *lingua franca* of universal civil jurisprudence," and even in the code before us we can trace some of those broader principles which affected, centuries ago, the law of testamentary gifts.

Stripped of many of the technicalities which burthen our own law language, the simple diction of the Indian code will tend much to make the study of Indian law inviting. But to make it interesting to other than a professional class much will be required to be done. A code on its first compilation can seldom be interesting. Neatness and perspicuity must often be sacrificed to precision and an occasional harshness of diction. But it is to be hoped that intelligent commentators will not be wanting to make the code readable, smoothing its asperities, and rendering it more attractive. The Indian code, like the civil jurisprudence of the Roman jurists, like the common Law of England, or like the Code Napoleon of France, has, it will be remembered, been collected from various sources. A body of rules and principles, some of which are found in the past legislative enactments of the Indian Council, and others which have been found in decided cases, or in books which have already been published, will require considerable care to methodize and arrange into order. Nor will this be found to be an easy task. A work which would comprise the whole system of Indian jurisprudence, which, while it would be based on English law, would require to be applicable to the peculiar customs of the natives of this country, must require in its execution talent of no inconsiderable order. To expect that such a work would at once be free from inaccuracies, and at the same time have the lucidity of arrangement, the precision of diction, the purities of language, the classic elegance of

quotation and illustration, which have made the commentaries of Blackstone or the book of Montesquieu not only readable but text books on law for nearly a century, would be to expect impossibilities; and no more ingenious appeal could be made than that recorded in the language of the Indian Law Commissioners themselves. "One peculiarity in the manner in which this code has been framed will immediately strike your Lordship in Council. We mean the copious use of illustrations. In our definitions we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions; because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning. Such definitions standing by themselves might repel and perplex the reader, and would perhaps be fully comprehended only by a few students after long application; yet such definitions are found and must be found in every system of law which aims at accuracy. A legislator may, if he thinks fit, avoid such definitions, and by avoiding them he will give a smoother and more attractive appearance to his workmanship; but in that case he flinches from a duty which he ought to perform, and which somebody must perform."

The Civil Code is intended to supersede all others; and the Law Commissioners trust that resort will be had to no other system of law for solving an ambiguity or supplying an omission. As the code itself appears to be based on the more liberal principles of English Common Law and Equity, we trust that in future it will form, to use the language of Livy, the "*fons omnis publici privatique juris*," the fountain and source of Indian jurisprudence.

The framers of the Code are of opinion that the new law should not be applicable to all India: and under Sec. 340 of the Bill of 1864 it is proposed specially to exempt Hindoos and Mahomedans from its provisions. This is not, we believe, necessary, unless as regards the chapter on testaments. The law generally does not militate against the hereditary customs of either of those classes. Nor, from the nature of their past government, would any objections have been raised if it did so militate. Accustomed to a rigid and despotic sway under their own rulers, ready to lend a willing and unhesitating obedience to orders dictated by the cupidity or caprice of their magistrates, it is not likely that they would now find themselves aggrieved by decisions based on a Code, which has received the sanction of the legislature. But while special exemptions may be claimed for the peculiar laws which in India regulate successions, inheritances,

and adoption, the law of contracts, the duties of guardian and ward, the rights in property, the obligations of promises and covenants and the redresses for civil injuries should be equally binding on all classes. The principle of all despotic Governments is fear; and the timid allegiance unquestioningly lent to the laws of their own rulers would unhesitatingly be transferred to those more liberal and enlightened principles of law and jurisprudence which are now being conferred on them. When Charles XII of Sweden met with an unexpected opposition from the Senate, that despotic monarch wrote word that he would send one of his boots to command them.* The senseless despotism of that monarch, actuated by anger and a desire for vengeance, displayed as reckless a regard for principle or law as any of the former Mahomedan rulers of this country. When the savages of Louisiana desired the fruit of the stately and lofty palm, reckless of the consequences of their own act, they felled it to the roots. When Tippoo was doubtful of the truth of the reply made to him by one of his soldiers when accused of having unjustly taken and drunk some milk belonging to a villager, he struck the accused across his stomach; and the courtiers flattered whilst the crowd applauded an act of justice, which, while it may have been summary, was brutal in the extreme. When the successors of Tinur or the ministers of Aurungzebe found their revenues deficient, they plundered or laid waste those very lands on which they chiefly depended for replenishing their coffers. Under a despotism which has seldom been mitigated unless by the prejudices of religion or caste, there are few instances on record where resistance has been offered by the Hindoos to the laws imposed on them by their Mahomedan rulers.

And that it should have been so, is not to be wondered. A simple and uneducated community have no occasion for a number of laws. Laws and principles with their several springs and actions are little understood; they are still less discussed. The one principle which permeates the spirit of despotism is fear. The one question which the ministers under a despotism have to solve, is how to reconcile a spirit of exaction with a political and civil administration, which endeavours to combine individual aggrandisement with personal safety.

The ancient jurisprudence of India might be said to have been based on purely rational grounds, on the first principles of the law of nature. History and tradition alike teach us, that in general principles the laws of most nations bear to each other a certain

* Puffendorf's *Introduction to the History of Europe* in the article of Sweden, ch. 10.

resemblance; and in law as well as in other sciences can be traced, as *Dracon* says, "the same foot-prints of nature treading in different paths." The peculiarities of customs or of castes may have led to different acceptations of Hindoo law, but as deduced from the writings of the first of Hindoo legislators, their code might be defined as the law of nature philosophically considered.

The principles of the law of nature are often transmitted in the forms of innate ideas: and whether in the code of *Menu*, or in the rude jurisprudence of *Dracon*, *Solon*, or *Lycurgus*, the simple teachings of reason or the precepts of nature may be accepted in a great number of instances as a very fair base for the superstructure of more complex laws. A knowledge of those laws in a rude society is acquired intuitively, and it is only when the wants of society increase, when the constitution and requirements of mankind grow larger, when by a development and exercise of the mind it is felt that those laws will not satisfy all the wants of civil society, that a necessity for more varied and complex laws arise. Those laws, however framed or designated, embody in all countries the first rudimentary principles of civil or municipal law. Speaking precisely, that body of law may be defined as the law of nature applied to the government of States. It is the law which the civil power of a nation or community may establish, by the right vested in that power by the community itself, for the observance of its subjects. This law, consisting of the legislative enactments of the country, founded on custom or on written law, becomes the first recognized code by which civil actions are governed.

Such simply, in India as elsewhere, was the nature of the change which led to the first construction of a rudimentary civil code, enunciated in the book of *Menu*.

In the Hindoo laws of alienation the student of jurisprudence may trace some of those broad principles, based on the law of nature or of reason, which more or less affect the laws of all semi-civilized communities. Amongst the Hindus as amongst other nations, the civil law will be found to have modified or restrained the natural community of property. Absolute property in things movable or immovable having been acquired, it became an acknowledged principle of their law that they had a right to dispose of that property after death.* The principle of hereditary succession is universal. All real or personal ancestral property is inheritable; and the dictates of paternal partiality would point to the sons as entitled in the first instance to the property thus bequeathed. While

* Sec. xii. Principles of Pun. Civil Law.

this principle is thus universal, the caprice or convenience of different sects, or religious bias or prejudice, may have in some special instances modified or altered the order of succession.

The law of nature permits but does not enjoin the making of a will; and among a people or community where the art of writing is scarcely known or practised only by a particular caste, written wills drawn up with the formulæ or technicalities of law would scarcely be expected. And in such cases the intentions of the testator and the acceptance of the legatee were all that was necessary to complete the effect of the legacy.

The Hindoo law of intestacy is based on the ties of kindred. Ancestral property is peaceably inherited by the sons, the associates of the father's toils and the future representatives of his house. The sons first inherit; and like the agents of the Roman law, the preference is always given to the lineal descendants of the male line,—the grandson and great grandson—as they are found to stand in the nearest degrees of civil kinship. It is only in default of these that the widow or widows would be allowed to inherit, or their daughters on their death.

While then under the old Hindoo law we find that a female was scarcely capable of transmitting any legal claims, and while, so long as the sons lived, the cognates were looked upon in the light of aliens, we at the same time find that that law had made no invidious distinctions, and had not established, to use the language of an able jurist, that proud insolence of the laws of primogeniture which, under our own institutions, has been the cause of so much grievance.† In default of sons, grandsons, and of widows, a father, a mother, or a brother may inherit.

Such are the elementary rules of succession with regard to personal property: but with regard to fixed, real, or immoveable property this law will not allow cognates, unless in very rare and exceptional cases, to inherit. The rights of a daughter are inferior to those of male collateral relations. That it should be so is not strange. Property in land in India is associated with certain duties to be performed. It is often derived by the express character of its owner as a member of a body or coparcenery, whose consent has necessarily been given and without whose consent that right cannot be alienated, unless to somebody who could perform an equal amount of duty, or who would have an equal amount of representative qualification.§ Lands, therefore, would require

* See *Turnb. Hein.* 1. Sec. 287.

† See the Law of Intestacy in the Indian Civil Code, Sec. xxii. as applicable to G. B. S.

‡ See the case argued by the Rev. Dr. Bellew in Blount Tempest.

§ Para. 7. Sec. xii. Prin. Punj. Law, Nagpore Edition.

special alienation by will before they could be acquired by a sole surviving daughter.* Under the Hindoo law of succession, as under the law of succession of the Romans, we shall find that where the law of inheritance deviates from the principles of natural law, that deviation is owing to a desire cherished and fostered by a religious or family prejudice, the desire to keep the family and lineage intact. The *gens* was as sacred to the Hindoos as it was of old to the Romans; and the most sacred wish of a dying father was that a son might represent his line, and perform those last funeral and religious rites which could only be performed by a male descendant. The same principle impelled them to adopt. The acts of disinheritance by a parent were few; and the nice distinctions which our own laws draw between legitimacy and illegitimacy were not known, or but imperfectly acted on. In a brief article like this, it will not be necessary to trace the Hindoo law of inheritance and succession further.

Under the Indian code the law, as applicable to European subjects in India, will be found to be of a more impartial order. The ascending and descending and collateral series are clearly defined: and the law of succession and inheritance traced according to the principles of English law to each series according to proximity or distance of kindred.

Under the Indian code, the age of majority has been fixed at eighteen. No objection by either Hindoo or Mahomedan can be raised to that. Twenty-one is the age of majority by English law. As applied to India that law has been modified. An earlier age is better suited for warm climates. In Turkey the age is fifteen. In the enervating climate of the South and East, the passions disclose themselves earlier, the mind is sooner developed, the judgment more quickly matured than in our European climate; and in India especially where among the natives the marriages are earlier, the children sooner come of age.

In avoiding the distinction between wills and testaments, the Indian code aims at simplicity and uniformity. The nicer discrimination of English law would draw a distinction between the terms. Where lands or tenements are devised in writing, with or without an executor, it is a will. It is a testament, where personal chattels are devised, and where an executor must be named. For it is a maxim of Common Law that where an executor is not named, the party is said to die intestate. As by Statute I Vict. C. 26 all landed property may now be devised or bequeathed by will, and all contingent interests, rights of

* See Turnb. Hein: 1. Sec. 284.

entry and property, however acquired, so under the Indian code all property in India may be devised by will. ●

In giving expression to the meaning or wording of a will, the most reasonable construction is to be put on it, and effect ought to be given to the intention of the testator. In the construction of wills, fraud is to be guarded against. This in a country like India is specially necessary where chicanery is the rule and not the exception. As yet the custom of making wills is rare amongst the Hindoos. Not allowed by their laws to alienate their property by devise, it is only now owing to the example set them by us, as well as to the advance of society and the progress of ideas, that they have in some instances entered on the novel and artificial system of devising by will or testament. It is necessary then that while the law should so guard against the possibility of fraud in the construction of wills, it should also check anything like chicanery in the presumptive revocation of the same. Some formalities are required in the revoking, cancelling, obliterating or burning of a will. So nicely constructed and so artificially connected with the principles of Roman civil jurisprudence is our own law on this subject, that the doctrine of implied or presumptive revocation is based on a better foundation of reason than is naturally supposed; and the law will not allow a revocation to take place only on the presumed alteration of the testator's intention. That presumption in legal reasoning would not be considered material, unless it had appeared that an actual revocation had taken place.* We give briefly a summary of general rules for the construction of wills.† The principle will be applicable to other than English wills.‡

I. That a will of real estate, by whomsoever made and in "whatever language written, is construed according to the law "of England in which the property is situate, but a will of "personalty is governed by the *lex domicilii*.

"II. That technical words are not necessary to give effect "to any species of disposition in a will.

"III. That the construction of a will is the same at law and "in equity, the jurisdiction of each being governed by the nature "of the subject; though the consequences may differ, as in the "instance of a contingent remainder, which is destructible in the "one case and not in the other.

* Under the English Com. Law, the remedial law on this subject is that known as 29 Car. II. c. 3

† Jarman on Wills, vol. 2. p. 74.

‡ Norton's Law of Evidence, p. 315.

" IV. That a will speaks for some purposes from the period of execution, and for others from the death of the testator ; but never operates until the latter period.

" V. That the heir is not to be disinherited without an express devise, or necessary implication ; such implication importing not natural necessity, but so strong a probability that an intention to the contrary cannot be supposed.

" VI. That merely negative words are not sufficient to exclude the title of the heir or next of kin. There must be an actual gift to some other definite object.

" VII. That all the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole ; but, where several parts are absolutely irreconcilable, the latter must prevail.

" VIII. That extrinsic evidence is not admissible to alter, detract from, or add to, the terms of a will, (though it may be used to rebut a resulting trust attaching to a legal title created by it, or to remove a latent ambiguity ;)

" IX. Nor to vary the meaning of words ; and, therefore, in order to attach a strained and extraordinary sense to a particular word, an instrument executed by the testator, in which the same word occurs in that sense, is not admissible ; but the

" X. Courts will look at the circumstances under which the deviser makes his will—as the state of his property, of his family, and the like.

" XI. That, in general, implication is admissible only in the absence of, and not to control, an express disposition.

" XII. That an express and positive devise cannot be controlled by the reason assigned, or by subsequent ambiguous words, or by inference and argument from other parts of the will ; and accordingly such a devise is not affected by a subsequent inaccurate recital of, or reference to, its contents ; though recourse may be had to such reference to assist the construction in case of ambiguity or doubt.

" XIII. That the inconvenience or absurdity of a devise is no ground for varying the construction, where the terms of it are unambiguous ; nor is the fact, that the testator did not foresee all the consequences of his disposition, a reason for varying it : but, where the intention is obscured by conflicting expressions, it is to be sought rather in a rational and consistent than an irrational and inconsistent purpose.

" XIV. That the rules of construction cannot be strained to bring a devise within the rules of law ; but it seems that, where the will admits of two constructions, that is to be preferred which will render it valid ; and therefore the court, in one

"instance, adhered to the literal language of the testator, though
 "it was highly probable that he had written a word by mistake,
 "for one which would have rendered the devise void.

"XV. That favor or disfavor to the object ought not to influence the construction.

"XVI. That words, in general, are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another can be collected, and that other can be ascertained; and they are, in all cases, to receive a construction which will give to every expression some effect, rather than one that will render any of the expressions inoperative; and of two modes of construction, that is to be preferred which will prevent a total intestacy.

"XVII. That, where a testator uses technical words, he is presumed to employ them in their legal sense, unless the context clearly indicates the contrary.

"XVIII. That words, occurring more than once in a will, shall be presumed to be used always in the same sense, unless a contrary intention appear by the context, or unless the words be applied to a different subject. And, on the same principle, where a testator uses an additional word or phrase, he must be presumed to have an additional meaning.

"XIX. That words and limitations may be transposed, supplied, or rejected, where warranted by the immediate context, or the general scheme of the will; but not merely on a conjectural hypothesis of the testator's intention, however reasonable, in opposition to the plain and obvious sense of the language of the instrument."

We have thus reviewed briefly a few of the salient features of the law of testamentary alienation of property. To enter more minutely into details would scarcely be necessary in a review which is intended principally for lay readers. But as so much has been said of the possible future constitution of our courts of justice, we shall not apologize for touching on that subject here. We shall be pardoned if we view the question philosophically. Though connected with the Inns of Court, we have no undue leaning to the special pleading of Sir Erskine Perry, which would flood our law courts with barristers. Nor have we any special objection to his scheme. If the Government of India can secure barristers for India, very much good will be effected. This was Lord Westbury's private opinion, and we have no doubt that if Lord Westbury had still been Lord Chancellor, the sanction of his great official authority would have given effect to a scheme which he had planned, and which Sir Charles Wood would have been too glad to have carried out. That the

plan would have been a good one who can doubt? The judicial and legal professions are special ones and require special adaptation and fitness. So long as India was without a code, an intelligent bar, or superior appellate courts, the private opinion, the prejudice, or croquet of a Judge might have been accepted as a standard of equity. But it will be remembered that times are changed. The principles of jurisprudence can no longer be perverted or misinterpreted. The freedom of inquiry can no longer be checked. The practice of the bar must henceforth be interwoven with the authority of the bench. The publicity afforded by the press will no longer allow a veil of mystery to shroud the once sacred procedure of our law courts. From the disputes of the bar and the bench, in subtle or intricate cases, will be elicited those general principles, which will form future precedents for guidance. Axioms, maxims, and rules will no longer be accepted as correct, unless they have been proved to be so, and the greatest of criminals will at least have the option of enlisting on the side of crime the sophistry of the pleaders or the science of the civilians. Under circumstances such as these, the policy of the Government as well as its duty should be to make the best selection from the materials at hand.

Nor is every one fitted for the legal profession. In India where officers are Judges alike both of law and of fact, and where in the absence of both pleaders and jury, responsibility often of the gravest kind rests on them, something more than ordinary qualifications are necessary. To be distinguished by a sound knowledge of the principles of law, how very few aspire? Still fewer are those who have gained a clear and comprehensive acquaintance with legal history, who have studied universal or particular jurisprudence, who have learnt to trace analogies or to distinguish between contending precedents, to unravel intricate points of dispute, to address juries with precision, to separate the specious from the false, or, as in India is too often necessary, to elicit truth from a mass of conflicting evidence. The genius of Cicero, the fancy of Plato, the logic of Tribonian, the edicts of the praetors, and the authority of Justinian, have alike pointed to the necessity of a careful selection of those officers who are virtually masters of the lives and liberties of the subject, and who are the guardians of peace and equity; and while, writes Gibbon, "under the Roman jurisprudence, in the weakest and the most vicious reign the seat of justice was filled by the wisdom and integrity of Papinian and Ulpian, the purest materials of the code and pandects were inscribed with the names of Caracalla and his ministers."

Under our own jurisprudence we find the same lessons inculcated, whether conveyed in the quiet precepts of Sir Mathew Hale, or in the close reasoning and keen logic of Hobbes. Whatever may be the practical exemplifications, the theoretical conduct of the judicial functionary should display great and exemplary diligence, skill in the laws, resolution in the enforcement of orders, attention to rational complaints, impartiality in the preservation of the rights of the subjects over whom he presides, easiness of accessibility, and dignity of demeanour.

Yet it is a painful fact that with regard to the Indian bench such is not often the case. In the animated discussions in the House of Commons on the introduction of the Bill to improve the courts of judicature in India, nothing could have been stronger than the sense of the House recorded on the administration of the law in India. "Nothing," said one member, "has more largely tended to discredit the Indian Civil Service, both in this country and at home, than the prevailing ignorance among its members of the first principles of law." The manner in which offices were bestowed was animadverted on strongly by men who looked upon the question in an Indian and English point of view; and the varied Indian experience of Lord Ellenborough, as well as the strong sense of Danby Seymour and Lord Stanley, condemned the principle which had too often given to the Mofussil bench military officers without aptitude, and civilians who had been found to be deficient in their revenue capabilities.

That some of the remarks then made were just, is much to be regretted. But it will be remembered that a few years ago, the higher judicial appointments were thought to be sinecures, and as such, that they should have been ridiculed is not to be wondered at. Sarcasm and irony have during all ages been employed to ridicule the reckless disposal of sinecures. One writer, repeating or improving the jest made by Sydney Smith, stated that during the administration of Lord Ellenborough forty tons of judicial heterodoxy had been introduced into the bench of India by the appointment of military men to the judicial offices in India. No peculiar training was required. In England while Judges have always had a strict legal training, in India no special aptitude or legal discipline was deemed necessary; and officers too often passed from the magisterial benches to the highest appellate jurisdiction who were unacquainted with the principles of evidence, the law of contracts, or the rules of pleading. The office of a judgeship was considered to be a sinecure. The last resort for officials who had failed to be good revenue officers was the curule chair of a Mofussil Judge.

"A cure, a cure, a sinecure,
"Of this you may be sure,
"An easy shoe you step into,
"A perfect sinecure."

Such might have been the motto inscribed over the doors of a Mofussil civil court thirty years ago, and such indeed was the opinion of the Government itself in those days. Lord Ellenborough remarked "that the Government often got itself out of a difficulty or off the horns of a dilemma by raising an incapable servant to the judicial bench." There, in the words of Southern in his inimitable character of Lord Dundreary, he was "done for." Like the log of wood in the hand of Horace's carpenter, he was quietly and silently shelved.

"Olim truncus erat ficulus, inutile lignum,
"Quem faber incertus scamnum saceretne priapum
"Maluit esse deum."

As the necessity had not arisen, so the subject of judicial legislation for India had then not acquired the importance which it now deserves.

And yet in one point of view the subject was even then, next to our policy with our feudatories and the rest of Asia, of the most vital importance. In its higher sense legislation for India means something more than administering justice according to a set form of procedure. The manner of that administration will be found to modify the strength of the executive government. It will be found to affect the welfare indirectly of one hundred and fifty millions of people with different languages, different castes, different religions, and different customs. It will be found to affect, with the happiness of thousands, the civilisation of the future.

The question how civilised nations should legislate for uncivilised is one of the gravest of the present day. "I can assure the House," said Sir Charles Wood in 1861, "that I never felt more responsibility than in venturing to submit to a proposal of so great and grave a character. I have always thought that the gravest question in modern times is the relation between civilised and less civilised nations, or between civilised portions and less civilised portions of nations, when they come in contact. The difficulty is seen in America, in Africa, in New Zealand, but nowhere in the widely extended dominions of her Majesty has it reached such a magnitude as in India. And in this particular case the difficulty is aggravated by the circumstance that the English, who form a portion of those who are to be subjected to this legislation, are not a permanent body. They go there for a time. Officials, when their

" term of service has expired, and persons engaged in commercial
 " or agricultural pursuits, when they have made a fortune, return to
 " this country, and, though the English element in India is perma-
 " nent as belonging to a nation, it is more transitory when we
 " come to consider the individuals who compose it. Such are
 " the circumstances under which we are to legislate, and I regret
 " to say that the recent mutiny has aggravated these difficulties.
 " The unlimited confidence which a few years ago was felt by
 " the European population in the natives of India has given way
 " to feelings of distrust. Formerly there was, at all events, no
 " feeling of antagonism between the higher portion of official per-
 " sons and the great mass of the population. They looked up to
 " the Government as to a protector, and if any feeling of anta-
 " gonism or jealousy existed, it existed only between them and
 " those members of the service who were brought into antagonis-
 " tic contact with them. When I heard some time ago that the
 " feeling of antagonism was extending itself lower among the
 " natives and higher among the officers I regretted it, because it
 " must obviously tend to increase the dangers of our position.
 " I do not wish to dwell on this matter, but it would be folly to
 " shut our eyes to the increasing difficulties of our position in
 " India, and it is an additional reason why we should make the
 " earliest endeavour to put all our institutions on the soundest
 " possible foundations. It is notoriously difficult for any Euro-
 " pean to make himself intimately acquainted with either the
 " feelings or opinions of the native population, and I was struck
 " the other day by a passage in a letter from one of the oldest
 " Indian servants, Sir Mark Cubbon, whose death we have had
 " recently to regret. He had been in the service for 60 years; he
 " had administered the affairs of Mysore for nearly 30 years; he
 " had been living in the most intimate converse with the natives,
 " possessing their love and confidence to an extent seldom obtained
 " by an English officer, and yet he said 'that he was aston-
 " 'ished that he had never been able to acquire a sufficient acquain-
 " 'tance with the opinions and feelings of the natives with whom he
 " 'was in daily communication.' Many of the greatest mistakes
 " into which we have been led have arisen from the circumstance
 " that we have been, not unnaturally, for arranging everything
 " according to English ideas. In Bengal we converted the collec-
 " tors of taxes into the permanent landowners of the country and
 " left the ryots to their mercy. In Madras Sir Thomas Munro
 " introduced the ryotwarry system, and a more impoverished
 " population than that does not exist. When I was at the
 " Board of Control, it was said that the system of the North-
 " Western Provinces was perfect, and it was introduced into the

“ newly-acquired province of Oude. Subsequent to the rebellion, the Indian Government, profiting by the circumstance, reverted to the old system in Oude, and happily with the greatest success. The ryots and zemindars of Oude joined their chiefs in the rebellion, but recently at an interview between Lord Canning and the talookdars they expressed their gratification at the restoration of the former system, and the governor-general justly congratulated them on the fact that tranquillity prevailed in a district which had been so frequently the scene of violence and outrage, and that in the most newly acquired of Her Majesty’s Indian dominions confidence existed which was not surpassed in the oldest settlements. The House may not be aware of the extraordinary and inherent difficulties in devising a system applicable to the whole of India. It behoves us to be most careful, as a rash step may lead to most dangerous consequences. It is easy to go forward. It is difficult to go back, and I confess I am disposed to err on the side of caution and to profit by the warning of one of the ablest Indian officers, Mountstuart Elphinstone, who said, ‘ Legislation for India should be most gradual, slow, and well-considered.’ ”

How we have legislated for India may be shown best in a brief summary of the enactments which have been passed for the legislation of India. We must again refer to the dry records of parliamentary blue books. “ In 1773 the governor-general in council was empowered to make regulations for the government of India, and in 1793 those regulations were collected into a code by Lord Cornwallis. Similar regulations applied to Madras and Bombay, and in 1803 they were extended to the North-West Provinces. Some time after that, Delhi, which was nominally under the sovereignty of the Great Mogul, was administered by officers of the Government of India, and with such good effect, that in 1815, when Lord Hastings acquired certain provinces, he determined that they should be administered in the same way by commissioners appointed by the Government. The same system has been applied to the Punjab, Scinde, Pegu, and the various acquisitions made in India since that date. The laws and regulations under which they are administered are framed either by the governor-general in council or by the lieutenant-governors or commissioners, as the case may be, and approved by the governor-general. That constitutes the distinction between the regulation and the non-regulation provinces, the former being those subject to the old Regulations, and the latter those which are administered in the somewhat irregular manner which, as I have stated, commenced in 1815. There is much difference of opinion as to the legality of the

“ regulations adopted under the latter system, and Mr. Peacock
 “ has declared that they are illegal, unless passed by the Legisla-
 “ tive Council. The Act of 1833, however, added to the council
 “ of the governor-general a member whose presence was neces-
 “ sary for the passing of all legislative measures, and put the
 “ whole of the then territory of India under that body, at the
 “ same time withdrawing from Madras and Bombay the power
 “ of making regulations. In that way the whole legislative power
 “ and authority of India were centralised in the governor-general
 “ and council. Since that time some provinces have been acquired
 “ which may be considered as non-regulation provinces: but it
 “ is not now worth while to go into details in regard to them.
 “ So matters stood in 1853, when great complaints emanated from
 “ other parts of India of the centralisation of power at Bengal.
 “ The practice was then introduced of placing in the governor-
 “ general’s council members from different parts of India. The
 “ tenor of the evidence given before the committee of 1852-53
 “ was to point out that the Executive Council alone, even with the
 “ assistance of the legislative members, was incompetent to per-
 “ form increased duties which were created by the extension of
 “ the territory. Mr. M’Leod, a distinguished member of the
 “ civil service of India, and who had acted at Calcutta as one of
 “ the law commissioners, gave the following evidence before the
 “ committee :—

“ ‘ The governor-general with four members of council, however
 “ ‘ highly qualified those individuals may be, is not altogether a
 “ ‘ competent legislature for the great empire which we have in
 “ ‘ India. It seems to me very desirable that, in the legislative
 “ ‘ government of India, there should be one or more persons having
 “ ‘ local knowledge and experience of the minor presidencies ; that
 “ ‘ is entirely wanting in the legislative government as at present
 “ ‘ constituted. It appears to me that this is one considerable and
 “ ‘ manifest defect. The governor-general and council have not
 “ ‘ sufficient leisure and previous knowledge to conduct, in addition
 “ ‘ to their executive and administrative functions, the whole duties
 “ ‘ of legislation for the Indian empire. It seems to me that it
 “ ‘ would be advisable to enlarge the Legislative Council and have
 “ ‘ representatives of the minor presidencies in it, without
 “ ‘ enlarging the Executive Council, or in any way altering its
 “ ‘ present constitution.’ ”

Such a council has now been established, and in addition also the High Courts in the Presidency towns, and in the North West.

While such machinery, remarks Sir Erskine Perry, is barely adequate to cope with the progress of European crime in India, the Mofussil and Zillah courts should be improved. The present

legal attainments are not sufficient. He would suggest the introduction of the barrister element. He would introduce barristers not only into the High but also into Mofussil Courts. But would not the scheme be costly? Would any men of eminence leave the bar for the heat of India and the miserably small pay of a barrister-judge? Would a single trained lawyer, would a single man likely to make himself eminent as Queen's Counsel on the Roll at Westminster come out? Would a single briefless barrister from the backwoods of the Queen's Bench, Exchequer or Common Pleas accept seven hundred or even a thousand a year on the condition of serving a life-long exile, amidst the swamps of an unhealthy station, where the entire society is possibly composed of a superintendent of police, an apothecary in charge of the station, and a district officer—his immediate superior probably a young Lieutenant fresh from his regiment, proud of his position as the great man of the district, and thoroughly ignoring anything in the shape of written law or professional legal knowledge. Appointed as assistant Judge, his legal knowledge, his acquaintance with the principles of English law, and the practice of English courts would be utterly useless and irrelevant, under an official, with whom on that point at least he could have no common points of official sympathy. He would too often be misunderstood. A triton among scientific men is often a minnow among unscientific men. A man of legal and professional training would be nothing, if placed in circumstances where legal and profession training alone would not be considered "the stamp exclusive and professional" for preferment in office or promotion on the bench. He would come to look upon the time which had been spent in studying for his profession as wasted. Of what use would his certificate be to him that he had passed the examination prescribed by the Council of Legal Education? In unlearning much of what he had learnt he would have to learn many things which he had not learnt. He would find that under the hereditary conservatism of ideas of the Government of India, as exemplified in Mofussil experience, the very worst military or civilian Zillah Judge in India would be regarded as a far more efficient man on a Mofussil bench than the most eminent Queen's Counsel on the Roll in Westminster. He would find that although an Act of Parliament existed which had thrown open all judicial appointments in India to any barrister or to any one displaying official aptitude, or to any native or uncovenanted officer, or advocate of the Scotch bar after seven years' residence,* in most cases and

* Act 24 and 25 Victoria cap. 104.

especially in the regulation provinces, the Act was a dead letter, and that there were judges under this very Act in India entrusted with the highest magisterial and civil powers, who, after ten years service, were only paid a pound a day, or very nearly the amount earned by a mechanic at home or a carpenter.

"A long experience," says Sir William Jones, "makes us sad." It does so particularly with India. As we write we cannot help quoting from the reflections of a friend, made on the very subject on which we are now writing. We shall be pardoned if we use his own words. Referring to no particular act of the Government of India, and basing his reflections on the general tenor of present official patronage in India, he thus writes:—"We once again realize in actual practical every-day life the fictions of the past, enriched even as those fictions are by the imagery of the past or the dim veil of mythology. Strange as such fictions may seem, and facts are often stranger than fiction, they may afford some points of strong parallism with the occurrences of every day around us.

"The prolific brain of Reynolds has interspersed the pages of the mysteries of the court of London with characters sensual and blood-thirsty *in excelsis*. We might establish a parallelism between the lives of men of the present generation and those of Reynold's heroes of the past. Ancient mythology, involving the very quintessence of fiction, may seem strange when compared with even the most ungoverned imaginative productions of the day, but it only furnishes proofs that humanity continues at this very moment to be unaltered from what it was cycles

"Our readers who occasionally recur in thought to the class room, will remember the celebrated Pandora, the first mortal woman whom the gods concerted to render a paragon of beauty and mental accomplishments. Venus conferred on her beauty, and the rather difficult art of pleasing; the Graces the power of captivating; Apollo taught her vocal music; Mercury and Minerva enriched her with eloquence and splendid ornaments. Some of us may have wished to have been in the shoes of Pandora, and possibly in the simplicity characteristic of unsophisticated youth even hoped to have basked in the sunshine of the smiles and favour of the complacent gods. Maturer years may have long since dissipated this day-dream, this delusive phantom, sketched out in the regions of fancy; nevertheless we startle the sobriety of our readers by asserting that Pandoras abound around us, with this difference only, that they belong not to the fair but to the rough sex, and are vastly more fortunate than the mythical lady herself, prefigured by Hesiod.

"We mean Indian officials:—these are the antitypes. A full-blown Lieutenant quits the scene of his labours redolent of pipe-clay and bad leather, and takes the professional chair of an assistant to the Chief Engineer. The gods smile upon him, and by and by he holds the administrative charge of a district that will hold any twenty counties of England. Anon he is metamorphosed into a coadjutor of the highest judicial functionary of the land, and finally sees the interior of a forum as an impeccable lawgiver."

Now, it has been allowed that in discussions of questions which affect the public, the public alone have a right to decide. So long as nothing was known of public justice as administered in the Mofussil, so long no opportunity could offer for public opinion to express itself. But public opinion often unerring, seldom wrong, has on this subject, whether through the press of India or of England, or whether in the discussions and debates of Parliament, expressed itself pretty clearly and loudly. An Act of Parliament has allowed the admission of pleaders, Scotch advocates, or English or Irish barristers to the Indian bar. To cope with men who have had a professional training, it will be necessary to have men on the bench who have also had a professional training.

There is no more powerful engine of education which the State can offer to a people than a well-conducted trial. Politics, theology, the American war, the merits of the Schleswig-Holstein dispute, these are subjects quite within the range of conversation, in which most people take a passing interest; but the trial of Muller or Howard, and the appeal of Mrs. Yelverton, are subjects on which the public, from the highest Judges of the land to carmen and fat boys, have a right to pass an opinion, because in every trial a principle is involved. On no subject is the press more unfettered in its opinion. A public principle is involved, and the persons who come before the public are public characters acting in a public capacity. In the strongest language used by the press in its animadversions on the best of officials, the law will impute no libel.* The powerful sarcasm of Lord Macaulay still holds up to derision the public conduct and private character of Judge Jeffries. The Chief Justice of the Irish bench is still remembered in his connection with the leading trial of Major Yelverton. On the other hand, a fair trial impartially conducted is an useful and valuable State-lesson. In the reserve and impartiality of a good Judge, in the strictness of aim and purpose, rendered compulsory by the rules of pleading

* Sec. 499 Act XLV of 1860, Exception 4th.

and evidence, in the control of a jury which can be exercised by the court, in the constant check upon extravagant, wandering and bullying questions which vigilant advocates can employ on behalf of their clients, lies material for a great variety of the most useful instruction of all who hear and read the proceedings.

We are not here using the language of any special pleader. But if the public were to have the option of choosing between barrister or military Judges, the public would select probably the men with long gowns and wigs,—men with at least some special training and with university diplomas. We believe Sir Erskine Perry has made himself unpopular in India for this suggestion. But in supporting that suggestion, we do so only on grounds of public justice, and unbiassed by any prejudices or favourite theories. We do not mean to condemn the system at present in vogue. We look upon Sir Erskine Perry's measure as an alternative one. The present system has its bright as well as its dark side; its recommendations as well as its drawbacks; its advantages as well as its disadvantages. But what we maintain is a wider selection with a due advertence to professional knowledge.

We trust that the new judicial system which has now been inaugurated will tend to correct some of the defects of the past. Much in the way of improvement has already been effected. The increase of litigation in the courts shows that our judicial courts are fast becoming popular with all classes of the native community. A healthy infusion of the barrister element will tend, it is to be hoped, to make them popular with the European community as well. The rules of procedure which have already been introduced under Act VIII of 1859 have not been found to impede justice. While in the Central Provinces, the Punjab and Oude, the average duration of suits has been considerably diminished, there are few arrears on the files at the end of the year. Business habits,—the foundation of success,—have been inculcated and officers have been taught by a judicious control over the workings of subordinate courts, by a system of prompt check and proper distribution of work, to correct many defects which had necessarily been associated under the old system with the administration of civil justice. The elimination of pleas and issues are now better understood; and irrelevancy,—the chief defect of the old system,—does not, in so many instances, disfigure and confuse the simple procedure which is now aimed at in the disposal of cases. "If errors still exist, their removal," writes one of the most able and talented of our present Indian administrators "can only be accomplished by a course of self-training, of which few of our officers have a just apprehension, and to which fewer subject themselves. The task is, perhaps, more

“ difficult in provinces like these, where each officer performs
“ judicial, administrative and executive functions in all branches
“ of the administration, but it is for that very reason the more
“ necessary to accomplish it. The routine must be methodized, or
“ the work cannot be well done. Organization is at the root of
“ success, and officers must remember that it rests with them-
“ selves alone.”

ART. III.—1. *Mémoire pour le sieur Dupleix contre la Compagnie des Indes, avec les pièces justificatives.* Paris, 1759.

2. *An account of the War in India between the English and the French on the coast of Coromandel from the year 1750 to the year 1760.* By Richard Owen Cambridge, Esq. London, T. Jeffereys, 1761
3. *A History of the Military Transactions of the British Nation in Indostan from the year 1745.* By Robert Orme, Esq. F. A. S. 1803.
4. *Histoire de la conquête de l'Inde par l'Angleterre,* par le Baron Barchou de Penhoen. Paris, 1844.
5. *Inde,* par M. Dubois de Jancigny, Aide-de-camp du Roi d'Oude, et par M. Xavier Raymond, Attaché à l'Ambassade du Chine. Paris, Firmin Didot Frères, 1845.
6. *The History of British India.* By Mill and Wilson, in ten volumes. London, John Madden and Co., Leadenhall Street, 1851.
7. *The National Review*, Vol. XV. London, Chapman and Hall, 193 Piccadilly, 1862.
8. *Nouvelle Biographie Générale, depuis les temps les plus reculés jusqu'à nos jours.* Paris, Firmin Didot Frères, 1862.

THE peace between the powers of Europe which had been signed at Aix-la-Chapelle afforded, as we have already stated, an opportunity for the introduction into India of a system, afterwards carried to a very considerable extent, whereby the European powers, moved by promises of material advantage, lent out their European soldiers to the native rulers. It is but right to add, that in almost every case the temptation came from the natives, and it should also be remembered that the treaty of Aix-la-Chapelle had been concluded at a time when an unusual number of the troops of both nations had been thrown on the Indian soil, and when therefore the employment of, and provision for, these soldiers, caused no little anxiety to the governors of the settlements. Dupleix indeed, in a letter* which he wrote to the

* Dated 31 March 1749.

French Company at the time, expressly justified his recourse to such a line of conduct by the necessity under which he was to practise the strictest economy.

In this custom however it was the English who set the example. The account of the expulsion of Rajah Sahoojee from Tanjore has been given in a previous number.* The duplicity of that monarch, his double overthrow by his own people, and his final expulsion in 1749 in favour of Pertab Singh will doubtless be recollected. It is necessary to refer to it* here, because it was this same Sahoojee, twice expelled from his kingdom, who, by his promises and entreaties, induced the English to lend themselves to the principle of supporting expelled and wandering royalty,—a principle which* nearly ruined them on this occasion, and which more than ninety years after, almost brought their empire to destruction in the snows of Afghanistan.† Eleven years had elapsed since Sahoojee had been expelled, and during that time Tanjore had enjoyed a quiet and a prosperity to which, under his rule, it had been a stranger, yet the desire of governing, so strongly planted in the Asiatic breast, would not allow the dethroned monarch to be tranquil. Although his experience of the attraction of a crown had been such as would have been sufficient to deter a man of ordinary sense from again striving for the dangerous prize, although on one occasion he had barely escaped from his enemies' hands, and on the second had been seized by them in the midst of his own guards, to the imminent danger of his life, he never ceased to sigh for his departed grandeur. To attain that state of sensual existence which had once been his, he was ready not only to stake his life, but to consent to the dismemberment of his country.

When, therefore, the news of the meeting of the European plenipotentiaries at Aix-la-Chapelle caused a suspension of arms in India, Sahoojee, who had been struck with the great superiority evinced in the field by the European over the Asiatic soldiers, resolved to endeavour to enlist on his behalf the aid of some of those redoubtable warriors. It was, however, he well

* *Calcutta Review*, No. lxxxiii, pp. 136-140.

† It is much to be regretted that the principle yet lives and flourishes, although it is carried out in a different manner. In the present day the spendthrift Rajahs and Nawabs, whose own vices have caused their expulsion from the thrones they had soiled, appeal, not to the Governor-General of British India, but to secret intriguers in England. By an expenditure of money, often as great as that which in former days they would have lavished on their armies, they obtain the aid of all who are venal. It is even whispered that resolutions not to rest till they have been restored have been pronounced in places where such language must be inconsistent with duty.

knew, useless for him to appeal to the French. Not only had he deceived them in 1738, but they had since lived upon good terms with his successor Pertab Singh. His only chance was with the English, and to them, therefore, he made his demand.

He was extremely liberal in his offers. The payment of all the expenses of the war, and the cession of Devicotta, a town on the mouth of the Coleroon, one hundred and twenty-two miles south of Madras, with the territory attaching to it, formed a tempting bait to a people possessing a surplus of soldiers, and just resting after a war which had severely tried their resources. At any rate it was eagerly grasped at, and in the beginning of April 1749, a force of 430 Europeans and 1,000 sepoys under the command of Captain Cope was despatched to re-establish ex-Rajah Sahoojee on his ancestral throne.

In a history relating mainly to the transactions of the French in India, it will be necessary to follow the movements of the English only in those instances in which an effect was thereby produced on the policy of their rivals. We do not propose therefore to enter into the details of this expedition against Tanjore. The results will be found chronicled hereafter. It is essential however that we should allude prominently to the fact of the enterprise, in order to make it clear that in the course which Dupleix adopted at this period, he but followed an example which the English had set him. The main difference between his proceedings and theirs was this:—that whereas in all his undertakings he had a settled purpose and design,—his smallest actions tending to one mighty end,—the proceedings of the English were the result of a haphazard and purposeless policy, their leaders not comprehending, even in the smallest degree, the result to which, if successful, they must inevitably tend.

In a previous number* we have recorded the fate which befell Chunda Sahib in his endeavours to defend Trinchinopoly against the army of Ragoojee Bhonsla. Taken prisoner by that general, he had been sent off (1741) under a guard to Sattara, and there kept for seven years in confinement. Vainly did he exert his utmost endeavours during that time to effect his release. Although in that period the Moguls had re-occupied Trinchinopoly, although the Nawabship of the Carnatic had passed from the family of Dost Ali, to which he was related, to a stranger, he was kept rigorously a prisoner. Not indeed that the Mahrattas had any state object in view in thus keeping him from his native province; it was simply a question of ransom. Chunda Sahib was comparatively poor. Allied only by marriage

* *Calcutta Review*, No. lxxxiii, page 148.

with the house of Dost Ali, he had not exercised independent authority for a sufficiently long time to amass any very considerable wealth. The jewels which constituted the greater part of it were with his wife and family in Pondichery. The remainder had been taken when he lost Trinchinopoly. For a long time, however, the Mahrattas insisted upon the payment of a kingly ransom as an essential condition of his release, and all this time Chunda Sahib, unable to pay it, saw opportunities vanish, kingdoms pass into other hands, and he felt too that every year added to that forgetfulness of himself, which is the unvarying consequence of the absence of a leader from the scene of action.

At last, however, fortune seemed to unbend. In the month of April 1748 Mahomed Shah, emperor of Delhi, died. His eldest son, Ahmed Shah, succeeded him, but the first months of his accession were too much engaged in preparations to maintain himself against his namesake, the Abdalli, and other enemies, to allow him to turn his attention to the events that were occurring in the remote Dekkan. It was however just at this moment that the attention of the feudal lord of the Empire was particularly required in those parts. A few months after the death of Mahomed Shah, (June 1748), Nizam-ool-Moolk, viceroy of the Dekkan, followed him to the grave at the ripe age of an hundred and four years. The succession had become, through the weakness of the central authority, by custom rather than by consent, hereditary in the family. Now Nizam-ool-Moolk had left five sons. The eldest, Ghazec-ooden Khan, was however high in the imperial service, and preferred pushing his fortunes at Delhi to striking for an inheritance which he felt could only be gained by the sword. The second son, Nazir Jung, had been engaged in constant rebellion against his father, but he was with him, having been recently released from captivity, when he died. The other three sons were men of little mark, who had been content to live a life of ease and pleasure at the court of Aurungabad. Besides these sons, there was a grandson, Mozuffer Jung, the son of a daughter, who had been always indicated by his grandfather as his successor. The consent of Mahomed Shah to this arrangement had been previously obtained, and on the death of Nizam-ool-Moolk, a firman was issued by the court of Delhi nominating Mozuffer Jung viceroy in his place.

When that event occurred however, Mozuffer Jung, the legitimate successor, was at his government at Bijapore, whilst the lately rebellious son, Nazir Jung, was on the spot. This latter at once acted in accordance with the customs which had

obtained from time immemorial under the Mahomedan sway in Hindostan. He seized his father's treasures, brought over the leading men and the army, and proclaimed himself viceroy of the Dekkan. The claims of Mozuffur Jung he derided, and set him at open defiance.

Mozuffur Jung however was not inclined to give up his pretensions without a struggle, though for the moment he did not possess the means to support them. In this crisis he bethought him of the Mahrattas, the hereditary enemies of Mahomedan authority, and he decided to go in person to Sattara to demand their assistance. At Sattara he met Chunda Sahib, of whose great reputation he was fully cognizant. The two men felt at once that they could be mutually serviceable to one another. They therefore soon came to an understanding. They agreed to endeavour to obtain material aid from the Mahrattas, insisting also on the unconditional release of Chunda Sahib.

A negotiation was accordingly opened. But whilst it was in progress, and seemed to promise well, Chunda Sahib, who had little real wish to conquer the Carnatic with the aid of his old enemies, communicated full details of their plans to Dupleix, with whom he had maintained, through his wife, a constant correspondence. Threatened at the time by the English, Dupleix had no desire to add to the existing complications by bringing on the province a Mahratta invasion. The prospect however of placing on the viceregal throne of the Dekkan one who would thus be a *protégé* of his own, and over the province of the Carnatic a man so devoted to French interests as he knew Chunda Sahib to be, was too alluring to be resisted. Pondering in his mind how this could be effected, the thought struck him that it needed only a daring and decided policy of his own to bring about such a result. He at once embraced the project with all the ardour of his impassioned nature; wrote to Chunda Sahib to negotiate only for his release, and not for troops; engaged to the court of Poona to guarantee the ransom that might be agreed upon; and promised to both Mozuffur Jung and Chunda Sahib all the influence and power which he, as ruler of French India, was capable of exerting. His despatch had the desired effect. On receiving a guarantee from Dupleix for the payment of 700,000 rupees, Chunda Saheb was released and furnished with a body-guard of 3,000 men to escort him to his own country.

One of the first acts of Chunda Sahib after his release was to enter into an engagement with Dupleix, whereby he took upon himself the payment of about 2,000 natives, drilled in the European fashion, belonging to the Pondichery garrison.

In consideration likewise of being assisted by 400 Europeans, he agreed to make to the French the cession of a small tract of land in the immediate neighbourhood of Pondichery. Whilst arrangements were in progress for these troops to join him, he had succeeded in making his way, after some changes of fortune, to the frontiers of the Carnatic, and in augmenting his force to 6,000 men. Here he was joined by Mozuffer Jung at the head of 30,000. Chunda Sahib, who was by far the abler character of the two, resolved, so soon as he should be joined by his French auxiliaries, to march upon Arcot. A victory here would place the resources of the Carnatic at his disposal, and bring him into close association with the French. He could then make it, with every prospect of success, the basis from which to operate against Nazir Jung.

Towards the end of July the French force already indicated, under the command of M. d'Auteuil and accompanied by the son of Chunda Sahib, joined the latter at the Damalehery Pass, which he had taken care to secure. Here they received information that Anwarooddeen and his two sons, at the head of 20,000 picked troops, including among them 60 European adventurers, had taken post at Amboor, about thirty miles to the south, prepared to give them battle. Thither accordingly they marched. The position taken up at Amboor was extremely strong, being defended on one side by a mountain surmounted by a castle, and on the other by a large lake. The ground between these, constituting naturally a very strong pass into the Carnatic, had been further fortified by entrenchments. These were defended by guns served by the Europeans to whom we have alluded. Behind these was the main army of the Nawab.

It was on the morning of the 3rd August that the combined army of Chunda Sahib and M. d'Auteuil came in sight of this position. It was at once resolved to storm it, and d'Auteuil offered to lead the attack with his French. Such an offer was gladly accepted, and at the head of his gallant countrymen, d'Auteuil advanced boldly to the attack. The Nawab's guns however were so well served by the Europeans in his service, that the assailants fell back with some loss. Indignant at this, d'Auteuil rallied them and led them himself, notwithstanding a heavy fire, up to the foot of the entrenchment. The breast-work was even mounted by some of them, but in the crisis of the attack, M. d'Auteuil was wounded in the thigh, and in the confusion that followed, his men lost order and retreated. The command then devolved upon M. de Bussy, and the troops, encouraged by him and the other officers, eagerly called to be led on for the third time. This determination on their part disheartened

the defenders, many of whom had already fallen. Even had they stood more firm however, they could scarcely have resisted the impetuosity of the charge. Led on by the gallant Bussy, the French reserved their fire till close to the entrenchments; then delivering a volley, they dashed over the breastwork, and the day was their own. Having lost this defence, the native portion of Anwarooddeen's army made but little resistance. Followed by the troops of Chunda Sahib and by that leader in person, the French pushed on. It was in vain that Anwarooddeen, himself 107 years old, made the most gallant efforts to restore the fight. In the very act of singling out Chunda Sahib for a hand to hand encounter, he was shot through the heart by an African soldier. A general disorder followed; the defeat became a rout; Maphuz Khan surrendered himself a prisoner, and the second son, Mahomed Ali, saved himself by an early flight. The camp, the baggage, sixty elephants, many horses, and all the artillery fell into the hands of the victors. But their greatest prize was the province of the Carnatic, secured to them by this victory. Of this they obtained an immediate gage in Arcot, the capital, which they occupied the next day. In this battle the French lost 12 men killed and 63 wounded. About 300 of their sepoys were killed and wounded.*

The earliest act of Mozuffer Jung on his arrival at Arcot was to proclaim himself Subadar or Viceroy of the Dekkan, and to nominate Chunda Sahib Nawab of the Carnatic.† Having secured the surrounding country by means of flying parties, the two governors proceeded to Pondichery, Mozuffur Jung to acknowledge the aid he had received, Chunda Sahib to pour out his thanks for the protection which for so many years, and under such trying circumstances, the French governor had afforded to his family. They were received with the greatest pomp and ceremony. No one knew better than Dupleix the effect of display upon the oriental mind. He took care, however, that accompanying the glitter of outward show there should be a simultaneous exhibition of that material power which, more than any other, is in Asia capable of ensuring respect. The defences which had defied the English were dressed out for the occasion; the European troops, whose superiority had been proved at St. Thomé and Amboor were conspicuously drawn up, the ships in the harbour displayed their brightest flags. No artifice was omitted in fact to impress

* Chunda Sahib presented the French troops after the battle with 75,000 rupees, and M. d'Auteuil with land worth 4,000 rupees per annum.

† One of the first to congratulate Chunda Sahib on his elevation and to acknowledge him as Nawab, was the Governor of Madras, Mr. Floyer.—*Memoire pour Dupleix*, page 46.

upon the minds of his guests, that the pomp and ceremony of their reception were but the natural consequence of a wealth and influence which rested upon a power that nothing in the south of India could resist. The effect was all that he could wish. Mozuffer Jung was captivated by the display; the gratitude of Chunda Sahib was unbounded. In the first moments of his delight he conferred upon Dupleix the sovereignty of eighty-one villages, adjoining the ground of which Pondichery was the representative capital. Mozuffer Jung stayed eight days at Pondichery. His army, amounting to from 45,000 to 50,000 men, remained encamped meanwhile within twenty miles of the city.*

But amid all the festivities that followed the arrival of these two Nawabs, Dupleix did not lose sight of the main object which had brought them into the field. We have already stated that though Muzuffer Jung held the higher rank, Chunda Sahib was of the two by far the abler man. When then Muzuffer Jung, at the expiration of eight days, rejoined his camp, twenty miles from Pondichery, Dupleix retained Chunda Sahib to settle the plan of the campaign. It was true that the possession of the Carnatic seemed to have been decided by the battle of Amboor. The old Nawab had been killed, his eldest son taken prisoner, and the younger, Mahomed Ali, had sought refuge in flight. Yet so long as there remained a pretender to the dignity, Chunda Sahib could not consider himself firm in his seat. It is beyond question that he had, both by hereditary descent and by imperial nomination, a greater right to the office than any of the family of Anwarooddeen. He was, in the first place, the representative of the family of Dost Ali, and, in the second, he had been nominated by Mozuffer Jung, whose title to succeed Nizam-ool-Moolk as Viceroy of the Dekkan had been confirmed by a firman from the court of Delhi.† But in the distracted state of the Mogul empire, no right could be considered secure that was not based upon a possession that could be maintained. Nor, at the same time, could any possession be regarded as perfectly tenable, to which any pretender was in the field waiting for his opportunity. Dupleix, well aware of this, did not cease to press upon Chunda Sahib the absolute necessity of ensuring the submission of Mahomed Ali, before he resigned himself to the more peaceful cares of his govern-

* *Extrait de la lettre de M. Dupleix à la Compagnie; le 28 Juillet, 1749. Copie d'un extrait du registre des délibérations du Conseil supérieur de Pondichery 13 Juillet, 1749. Memoire pour Dupleix, Orme, Cambridge, Raymond, &c., &c., &c.*

† Dupleix, page 42. Seer Mutakhareen.

ment. Rapidity in his movements was, he pointed out, the more requisite, as Mahomed Ali had taken refuge in Trinchinopoly, the fortifications of which had been greatly strengthened since Chunda Sahib had been compelled to surrender it to Ragoojee Bhonsla. Added to this, it was known that Nazir Jung, the pretender to the viceroyship of the Dekkan, was engaged in levying an army wherewith to crush his nephew and rival. It was, therefore, more especially necessary to clear the Carnatic of all foes, before this greater enemy should be ready to march upon it. The exhortations of Dupleix to Chunda Sahib to march without any delay upon Trinchinopoly were therefore earnest and repeated.

One circumstance, however, served to hinder the native chieftains from moving. The battle of Amboor had been fought on the 3rd August; Madras, in pursuance of the articles of the treaty of Aix-la-Chapelle, had been made over to the English at the end of the same month, but still Admiral Boscawen remained on the coast. More than that, he had taken advantage of the disordered state of affairs to possess himself of the little settlement of St. Thomé, upon which he had hoisted the English flag. It was known too that he was himself strongly impressed with the necessity of remaining to support English interests, and that he had declared he would remain, if he were publicly requested to do so.* It appeared then to Chunda Sahib, that for him to move on Trinchinopoly, whilst Admiral Boscawen was on the coast, would act as a final inducement to that officer to remain, and would impel the English to cast in their lot, whilst their forces were yet considerable, with his rival, Mahomed Ali. He, therefore, hesitated as to his action, preferring to wait at all events in the hope that the October gales might compel the departure of so dangerous an enemy.

Whilst he and his allies are thus watching their opportunity, it may be convenient for us to turn to the movements of the English, and to relate as briefly as may be the result of their expedition against Tanjore.

This expedition had been undertaken, as we have already stated, with the avowed object of re-seating upon the throne of that kingdom the twice expelled Raja Sahoojee,—with the real purpose of gaining for themselves the possession of Devicotta. Consisting of 430 Europeans and 1,000 sepoys, under the command of Captain Cope, this force had left Fort St. David in the early part of April, and on the 24th, arrived on the bank of the river Vellaur, near Portonovo. On the following morning

* Orme.

a terrific storm ensued, which caused great damage to the land forces, and greater to the fleet. Of the former, many of the carriage, cattle, and a large proportion of the military stores were destroyed; of the latter, the admiral's flagship, the *Namur*, of 74 guns, the *Pembroke*, of 60 guns, and the *Apollo*, hospital ship, with the greater part of their crews were totally lost.* It thus became necessary to suspend for a time the progress of the undertaking.

When, however, after having made good his losses Captain Cope renewed his march and arrived on the borders of the Tanjore territory, he found the actual state of things to differ very much from the representations that had been made him. Not only was there no disposition evinced by the Tanjoreans to strike a blow for Sahoojee, but their army was found posted on the southern bank of the Coleroon, ready apparently to oppose the passage of the English. Their real object, however, was to entice Captain Cope into the difficult country to the south, where his destruction would have been certain. But the direction taken by the English after the passage of the river, shewed very plainly the real object they had in view in espousing the cause of Sahoojee. Their army marched in the direction, not of Tanjore, but of Devicotta, where they expected to find support from the fleet. But on their arrival that same evening within a mile of Devicotta not a ship was to be seen. Having with them no supplies, and finding the place too strong to be escalated, they resolved, after cannonading it fruitlessly during the night, to retreat. This they effected without serious molestation, and on the second day reached Fort St. David. Had the real object of the English been that which they professed,—the restoration of the ex-Raja Sahoojee,—they had seen enough to be convinced that to effect this they must be prepared to employ all the resources of their Presidency in a war with a native power. They no longer however even pretended to have this in view. But Sahoojee had promised them Devicotta,† and the advantages presented by that place were too great to be lightly given up. Whether they received it from Sahoojee or Pertab Singh was to them immaterial. They were resolved to possess it at any price, and with this avowed object, throwing over Sahoojee, they despatched

* Journal of an Officer.

† The river Coleroon, which runs into the sea near Devicotta, was believed to be capable of receiving ships of the largest tonnage. The only difficulty was presented by the sands, but it was thought that these, with a little labour and expense, might be removed.—*Orme*.

by sea a second expedition, consisting of 800 Europeans and 1,500 sepoys under the command of Major Lawrence.

It is unnecessary to enter into the details of this expedition. It will suffice to state that it was successful. Devicotta after a gallant resistance was stormed, and Pertab Sing, to avert further hostilities, and anxious now to secure the alliance of the English against Chunda Sahib, whom he regarded as the most dangerous enemy of the Tanjore kingdom, agreed to cede that fortress to that nation, together with so much of the surrounding territory as should produce an annual revenue of Rs. 36,000. The English, on their part, agreed to abandon the cause of Sahoojee, and even to keep him under *surveillance* at Madras, on condition of his receiving a life pension of Rs. 4,000. Such was the result to him of his alliance with an European power.

The English were occupied with their new conquest, when they learned the success of Chunda Sahib at Amboor. They hastened to acknowledge him at Arcot. Nevertheless, noticing his subsequent visit to Pondichery, his protracted stay there, and the intimacy which he vaunted with Dupleix, they were not deaf to the solicitations,—poor as they considered his chances of success,—of Mahomed Ali. They waited however the further proceedings of Chunda Sahib, before committing themselves to any definite action. When moreover they saw that that chieftain remained idle at Pondichery, making no movement against his rival, they hesitated still more as to the course they should follow. Admiral Boscawen, on his part, was eager to support Mahomed Ali, and even offered to stay on the coast, if he were officially requested to do so. But Mr. Floyer shrank from a line of policy which seemed to commit the Presidency to the support of a pretender *in extremis*. He therefore suffered the admiral to depart on the 1st November, taking from him only 300 men as an addition to his garrison.

The departure of Admiral Boscawen constituted the opportunity for which Chunda Sahib had been so long watching. All his preparations had been made. Dupleix, with that rare disinterestedness and care for the resources of the colony which so eminently characterised him, had advanced to this chief 100,000 rupees from his own funds, and had induced other individuals to advance 200,000 rupees in addition.* He also supplied him with 800 European troops, 300 Africans, and a train of artillery, from the support of which Pondichery was thus freed, whilst the troops remained at the disposal of Dupleix. They

* These advances were secured on lands which were temporarily made over to the French.

were now with Chunda Sahib under the immediate command of M. Duquesne. On the very day after the departure of the English fleet, this united army marched upon Trinchinopoly. There, as Dupleix pointed out to the leaders, they would find the end of all opposition. The only man who had the shadow of claim to oppose to the pretensions of Chunda Sahib was in that fortress. To take it therefore was to destroy the last stronghold of the enemy, and with it the only chieftain capable of offering any opposition.

It is indeed clear to us now, as it was clear to Dupleix at the time, that upon the capture of this place depended the permanent preponderance of French influence in Southern India. Had that been accomplished, there could have been no possible rival to Chunda Sahib, the English would have had no excuse to refuse to acknowledge his supremacy. In fact that supremacy would have been so firmly rooted, so strongly established, that they would not have dared to dispute it; they would, in a word, have been forced to recognize the superiority on the Coromandel coast of a governor, who, by inclination, gratitude, interest, was bound irrevocably to the French.

Such indeed was the policy of Duplex. * To carry it out he had brought every resource to bear on his native allies. He had given them money, men, guns, and officers, and they, on their part, had left Pondichery, under an engagement to pursue the course of action he had pressed upon them, as alike best suited to his interests and theirs, *viz.* to march direct upon Trinchinopoly.

Yet here was another instance afforded of the uselessness even of great genius, when the tools which genius is compelled to employ are weak and vacillating. Surely Dupleix had a right to believe that his native allies, having been equipped and supplied by him, and having started on an expedition they had promised to carry out, would at least march to their destination. Once there, he relied on his own commander, Duquesne, to do the rest. His mortification then can be imagined when he learned that after crossing the Coleroon, they had diverged from the road to Trinchinopoly and had taken that to Tanjore.

The fact was that during their stay at Pondichery, Chunda Sahib and Mozuffer Jung had exhausted on their own pleasures the money Dupleix had intended for the expenses of the army, and they found themselves, after crossing the Coleroon, in an enemy's country with an empty treasure chest. In this emergency Chunda Sahib bethought him of the king of Tanjore,—a prince whose riches were proverbial, and whose arrears of tribute to the Mogul, Mozuffur Jung, as Subadar of the Dekkan,

considered himself entitled to receive. In the hope of compelling this monarch to pay such a sum as would place them at ease regarding their expenditure, and in the belief that with the aid of their French allies the task would be easy of execution and short in its time of duration, they, without even consulting Dupleix, turned aside from the road leading to Trinchinopoly, and took that to Tanjore.

This city, situated in the delta of the Coleroon and the Cavery, was defended by two forts, the greater and the lesser. The former was surrounded by a high wall and a ditch, but the fortifications were too inconsiderable to resist the attack of a vigorous enemy. The lesser fort, a mile in circumference, was far stronger, being surrounded by a lofty stone wall, a ditch excavated from the solid rock, and a glacis. Within this was a pagoda surpassing in magnificence all the buildings of Southern India, and believed to contain countless riches. The allied army arrived before this place on the 7th November, and at once summoned it to surrender. The king, Pertab Singh, with a view to gain time, expressed at once his willingness to negotiate, whilst at the same time he sent pressing messages to the English and to Nazir Jung, demanding assistance. The English, who had already despatched 120 men to aid Mahomed Ali at Trinchinopoly, ordered twenty of these to proceed to Tanjore. How Nazir Jung responded to the summons we shall see further on. On receiving the reply of the Tanjorean, Duquesne, the commandant of the French contingent, acting upon the instructions received from Dupleix, urged upon Chunda Sahib not to waste his time in vain negotiations, but to compel compliance with his requisitions by force. This was undoubtedly the direct and proper course to pursue. But Chunda Sahib, who wanted only the money, and who believed the Rajah was in earnest about paying it, earnestly requested Duquesne to abstain from all appearance of hostilities so long as negotiations should be going on. In Pertab Singh, however, he met a man more wily and cunning than himself. For six weeks he suffered himself to be duped by protestations and promises, fruitless though they were of any result. In vain did Dupleix press upon him the superior advantage of Trinchinopoly; to no purpose did he point out to him that he was giving time to Mahomed Ali to strengthen his position, and to Nazir Jung to march upon his communications. Chunda Sahib was infatuated with his negotiation. To such an extent did he carry this feeling, that Dupleix, seeing the gathering storm, and apprehending not only the failure of his hopes, but danger to French interests, sent positive orders to Duquesne to break off the negotiation by an attack upon

Tanjore. Duquesne obeyed; and his vigorous measures had a decisive effect. On the 26th December, he captured three redoubts about 600 yards from the walls; three days later, after some fruitless negotiations, he assaulted and carried one of the gates of the town. This so intimidated the Rajah, that he at once gave in, and on the 31st signed a treaty whereby, amongst other stipulations, he agreed to pay to Mozuffer Jung and Chunda Sahib seven millions of rupees; to remit from the French East India Company the annual ground rent of seven thousand rupees, which it paid him; to add to the French possessions at Karical territory comprising eighty-one villages; and to pay down to the French troops 200,000 rupees. But, meanwhile, Nazir Jung had succeeded in collecting an enormous army, and was on his march to crush his nephew and rival. Intelligence of this had already been conveyed by the English to the king of Tanjore, and this monarch had recourse to all the arts of which he was master to lengthen out the term of payment. By sending out, in satisfaction of the sum he had agreed to pay, sometimes plate, sometimes obsolete coin, sometimes jewels and precious stones, he detained Chunda Sahib for some weeks longer under his walls, and it was not until a pressing message from Dupleix informed him that Nazir Jung had entered the Carnatic, that this chieftain renounced the hope of obtaining, even by those instalments, the promised ransom. Even then Dupleix recommended vigorous measures. He urged upon him to seize Tanjore at once, both as a means of punishing the faithless Rajah, and of providing himself with a place of refuge. Chunda Sahib was willing enough to act up to this advice, but his troops refused to follow him. They too had heard the rumours of the approach of the vast army under Nazir Jung, and, panic-stricken at the report of its numbers, they broke up without orders, and fell back rapidly on Pondichery.

Thus, by the weakness of the instruments he was compelled to use, were the great plans of Dupleix temporarily shattered. Nay more, the very men who had caused their defeat, and who by their want of energy had plunged themselves as well as him into misfortune, now came to beg him to extricate them from their difficulties. He made the attempt, not indeed with any great confidence in his allies,—for the past three months had shewn him their weakness,—but yet with a steadfastness, an energy, an adaptation of means to the end, such as even at this distant day must challenge and command our admiration. He did not, as we shall see, succeed in the outset, but his patience, his perseverance, his energy, could not be long working without producing some advantageous result. Before however noticing

the manner in which he acted, we propose to take a comprehensive glance at the situation.

The army of Mozuffer Jung and Chunda Sahib 40,000 strong, panic-stricken from the rumours of the vast force of Nazir Jung, and mutinous from want of pay, was under the walls of Pondichery. With it had come the French detachment of 800 men, now commanded by M. Goupil, its former leader, Duquesne, having died of fever at Tanjore. On the other side, the enormous army of Nazir Jung, consisting of 300,000 men, of whom one-half were cavalry, together with 800 pieces of cannon and 1,300 elephants, was marching on them from Arcot. On their way they were joined by Moorari Rao at the head of 10,000 Mahratta horse, fresh from a skirmish with the allied army at Chillumbrun; whilst on reaching Valdaur, fifteen miles from Pondichery, Mahomed Ali, the pseudo-Nawab of the Carnatic, brought six thousand horse into their camp, and, what was of far greater consequence, they were strengthened a few days later,—the 2nd April,—by the junction of 600 Europeans under Major Lawrence. The English, in fact, had resolved to take advantage of the check received by the French *protégés* at Tanjore, by using all their influence to support the rivals and opponents of those chieftains.

Against such a force what was Dupleix to do? There was but one course, which even to conceive, it was necessary that a man should have been born with a daring and subtle intellect. Successfully to encounter this force it was absolutely necessary that the opposing army, however disproportionate in numbers and deficient in material, should oppose to it a bold and resolute front. Yet how to infuse the necessary courage into the panic-stricken and mutinous soldiers of his two allies? This was a problem which seemed hard to solve. Dupleix nevertheless attempted it. First of all, he stopped the mutinous spirit. This he effected by advancing from his own funds a sufficient sum to pay up their arrears. Their courage he endeavoured to re-animate by showing that he was not afraid to support them by the entire available garrison of Pondichery. Goupil who had succeeded to Duquesne, having himself fallen ill, Dupleix placed at the head of the contingent M. d'Auteuil, who had recovered from the wounds he had received at Amboor, and increased its strength to 2,000 men. The force, encouraged and strengthened by these means, moved in a north-westerly direction from Pondichery, and took up at the end of March a strong position opposite the enemy's camp at Valdaur. At the same time Dupleix did not neglect those means which he had often used so successfully, of endeavouring by intrigues

and secret communications to work upon the mind of Nazir Jung in favour of French interests. He was on the point of succeeding, when unexpected events, impossible to have been guarded against, neutralised the effect of these negotiations, and brought down the fabric of his vast plans.

It happened, unfortunately for Dupleix, that a very bad feeling prevailed at this moment amongst the officers of his army. The twenty thousand rupees received at Tanjore had been divided amongst those troops only, who had participated in that service. Many of these had received leave of absence, and those who took their place, as well as those who joined with the fresh troops, grumbled most unreasonably at having been assigned a duty which would expose them to great risks without the chance of prize-money. For the moment Dupleix was powerless to punish the malcontents, so few were the officers at his disposal. He trusted, however, to their military honour to behave as soldiers and Frenchmen in the presence of an enemy. But in this hope he was disappointed. On the very evening of the day in which the two armies had for the first time exchanged a cannonade from their respective positions,—the 3rd April,—thirteen officers of the French army went in a body to M. d'Auteuil, resigned their commissions, and refused to serve. This was not the least of the evil. Not content with refusing to fight themselves, these officers had done their best to induce the soldiers they commanded to follow their example. By a baseness happily unparalleled they had succeeded in sowing the seeds of disaffection and distrust. Even the sepoys in the pay of France could not see unmoved the sudden withdrawal of those they had been accustomed to regard as their leaders. Doubt and hesitation pervaded their ranks, and d'Auteuil suddenly found, on the eve of a battle which, if it were unfavourable to him, would be ruinous to French interests, that he commanded an army which was utterly demoralised, which could not be relied upon to face the enemy.

Few men have ever found themselves in circumstances more difficult, more requiring quick and prompt decision. To stay where he was, to meet with his demoralised force, and the native levies of his two allies, the vastly superior numbers of the Nizam, the Mahrattas, and the English, was to court destruction for all. His men would not fight, and their retreat would have drawn with it the disorderly flight of the followers of Mozuffer Jung and Chunda Sahib. It seemed too more than probable that such a rout would encourage the enemy to make another attempt upon Pondichery. On the other hand, the withdrawal of his troops during the night would save the

French army for future operations, and would assure the safety of the French capital. But before taking any steps in the matter, d'Auteuil made one great effort to induce his army to sustain the part which best befitted them as soldiers. But his entreaties, his remonstrances, even his threats, were all in vain. The poison of mistrust had entered their ranks; the mutinous officers had persuaded them that they were being deliberately sacrificed to superior numbers, and so firmly had they imbibed this idea that all the reasoning of their commander was ineffective. They would not fight. Convinced now that his only course was to retreat, d'Auteuil sought an interview with his two allies, and laid before them the circumstances of the case. He shewed them that he was forced to retreat, and he put it to them whether they would prefer to follow his fortunes, or to endeavour to make their own terms with the enemy. Then came out the difference in the character of the two men. Chunda Sahib, whose long acquaintance and constant intercourse with the French had given him a high appreciation of their character and a confidence in their fortunes, declared unhesitatingly that he would cast in his lot with his European allies. Mozuffer Jung, naturally weaker, possessing little self-reliance, and unable to believe that d'Auteuil had not some other motive for his conduct, determined, on the other hand, to trust to the tender mercies of his uncle.

In accordance with these resolutions the French contingent commenced its retreat at midnight, followed by Chunda Sahib, who, with his cavalry, insisted upon taking the post of honour in the rear. So great however was the disorder in the French camp, so complete their demoralisation, that no one communicated the intelligence of the intended movement to the gunners, who, to the number of forty, manned the batteries in front of their camp; these therefore with their eleven guns were left behind.

Day dawned before the retreat of the French was discovered. But no sooner was it known than Moorari Rao, at the head of 10,000 Mahratta horse, started in pursuit of them. They came up with them just before they reached the prickly pear hedge, which formed the outer defence of Pondichery. On seeing their approach, d'Auteuil formed his men up in a hollow square, whilst Chunda Sahib held his cavalry in readiness to attack them after their repulse. Moorari Rao however, a splendid horseman, little acquainted with squares or European tactics at all, boldly charged and broke into the French formation. But at the same time Chunda Sahib charged his cavalry, who were thus, with the exception of fifteen, prevented from following

him. In this manner Morari Rao was with but fifteen men inside the French square, apparently lost. But the sullenness of the Europeans and his own daring saved him. He dashed at the other face of the square, and succeeded, with the loss of nine men, in cutting his way out. He then joined his cavalry who were engaged with Chunda Sahib. With him and with the French he kept up a running fire till they reached the hedge, when he thought proper to retire.

In this retreat the French lost nineteen men in addition to the forty left behind, many of whom were sabred by the natives, the remainder rescued from their clutches, and taken prisoners by the English. It was however less the loss of men and of guns that afflicted Dupleix, than the destruction by this *contretemps* of his vast plans. We have said that he was on the point of succeeding in inducing Nazir Jung to enter into engagements with himself. He had even persisted in this attempt after he had become aware of the existence of the mutinous feeling amongst the French officers, and it is probable that had the army only maintained its position in the field during the next day, Nazir Jung would have signed the treaty which was being pressed upon him. But this mutiny spoiled all.

‘It is easy to imagine,’ he says, writing in the third person in his memoirs, ‘what was the mortification of Dupleix, when ‘he was informed of all the details of the conduct of our cowardly ‘officers, and further, to complete his misfortunes, that Mozuffer ‘Jung had been taken prisoner and placed in irons by Nazir ‘Jung.’ This last intelligence was but too true. Though Nazir Jung had sworn upon the Koran to restore his nephew to the governments he had held, yet, in accordance with the customs not uncommon in Europe in the thirteenth and fourteenth and in India in the eighteenth centuries, he had at once loaded him with irons. He thus became undisputed Viceroy of the Dekkan, and one of his first acts was to appoint Mahomed Ali Nawab of the Carnatic. This was the destruction of those great schemes to which we have alluded, whereby Dupleix hoped to bring Southern India in entire subordination to French interests. No doubt his mortification was extreme, yet great as it was, it neither caused him to give himself to despair, nor even to abandon his plans. On the contrary, it impelled him to try new and bolder expedients to bring them to maturity.

He himself and the other inhabitants of Pondichery had received the first intelligence of the disgrace of the French army from the run-away officers themselves. These had hurried into the town on the morning of the retreat, and alarmed the inhabitants with the cry that the French army was beaten and that

the Mahrattas were upon them. The first act of Dupleix, on receiving intelligence of a nature so different to that he had expected, was to arrest these cowards. He then hastened to meet the army, to endeavour, if possible, to weed it of the disaffected, and to revive the spirit of the remainder. To this end he had recourse to the most stringent measures. All the disaffected officers were placed under arrest; d'Auteuil even was brought to trial for retreating without orders. The others were reminded that their retreat was in no way due to the enemy, but to the recreant behaviour of their own officers. This confidence in difficult circumstances did not fail to beget its like. The French soldiers felt in his inspiring presence that they had been indeed guilty, and to insubordination succeeded an irrepressible desire to be allowed an opportunity of recovering their name.

But whilst thus engaged in restoring the discipline of the army, Dupleix was equally prompt in dealing with the enemy. This could only be in the first instance by negotiation, and we shall see that in this he exerted the skill of which he was so great a master. Instead of shewing, in this hour of his extremity, by any abatement of his pretensions, how fallen were the fortunes of Pondichery, he directed his envoys to make demands little inferior to those which would have resulted from a French victory. They insisted, therefore, in his name, that no one of the family of Anwarooden should be appointed Nawab of the Carnatic, and that the children of Mozuffer Jung should be established in the estates and governments of their father. But they did not stop there. To favour their negotiations, they had recourse to those wiles which they had learned from the Asiatic princes, and which they now shewed they could use more skilfully than their masters. Thus they took credit for the defeat of d'Auteuil, and exaggerated the loss experienced by Morari Rao in his attempts to cut them off from Pondichery. All this time these same agents intrigued with the chiefs of the Nizam's army, especially with the Patan Nawabs of Kuddapa, Kurnool, and Savanore, and succeeded in establishing with these and others relations of a confidential nature.

Nazir Jung himself refused to agree to the terms proposed by MM. du Bausset and de Larche, the envoys of Dupleix, and on the seventh day, these two gentlemen returned to Pondichery. By this time a good feeling had been restored in the army; the officers who had disgraced themselves had been severely punished; others, less guilty, were only anxious by some brilliant achievement to wipe out the stain on their honour; d'Auteuil, who had shewn very clearly that he had acted in the only manner possible

for him to act under the circumstances, had been restored to the command. Now was the time to strike a blow; this the opportunity to shew the viceroy who had rejected his proposals that the French were yet, as an enemy, to be feared. No sooner then had the envoys returned than Dupleix sent instructions to d'Auteuil to beat up the camp of Morari Rao, situated between Pondichery and the main body of Nazir Jung's army. On the night of the 12th April, only eight days after the retreat from Valdaur, d'Auteuil detached 300 men under the command of M. de la Touche to surprise the enemy. They marched about midnight, reached and penetrated the camp without being discovered, killed about twelve hundred of the surprised and terror-stricken enemy, and returned to Pondichery at daybreak, having lost but three men of their party. This bold stroke had such an effect upon Nazir Jung, that trembling now for his own safety, he broke up his camp and retired in all haste to Arcot, abandoning the English, who returned to Fort St. David.

Having thus caused the prestige of success to return to his colours, Dupleix resolved to follow up his blow. Nazir Jung, on reaching Arcot, had resolved on a movement, by means of which, whilst he himself should remain safely shut up in that capital, he might avenge himself of his enemies. At the town of Masulipatam on the Orissa coast, and at Yanoon, situated at the junction of the Coringa river and the Godavery, the French had some time since established lodges or factories. These Nazir Jung resolved to seize, and did seize.

It happened that shortly before these occurrences, two ships, the *Fleury* and the *d'Argenson*, bound for Bengal, had touched at Pondichery for the purpose of discharging a portion of their cargoes, and re-loading at that place. Without confiding in any one, Dupleix made the necessary preparations, and the night before these ships were to sail he embarked on board of them 200 European and 300 native soldiers, with a battering train, and directed the commander to sail direct for Masulipatam and take possession of the place. They arrived there on the evening of the third day. The commander at once landed his troops, surprised the town, and took possession of it without the smallest resistance, and without spilling a drop of human blood. The French colours were at once hoisted on the place, and preparations were at once made for its retention.

But it was in the neighbourhood of Pondichery that Dupleix resolved to strike his most effective blow. Very soon then after Nazir Jung had left for Arcot and the English for Fort St. David, he ordered d'Auteuil to march with 500 men, cross the river Punar, and take possession of the fortified pagoda of Tiruvadi,

only thirteen miles from Cuddalore and almost in sight of the army of Mahomed Ali. The object of this was to obtain a *point d'appui* on the Punar, which would give them command of the neighbouring country and its revenues. The expedition completely succeeded. D'Auteuil captured the place without resistance, and having garrisoned it with 20 Europeans, 20 topasses, and 50 sepoy, began to make arrangements for pushing his conquests further. But Nazir Jung alarmed at the loss of Tiruvadi, yielded now to the pressing solicitations of Mahomed Ali, and reinforced him with 20,000 men. At the same time the English, to whom the possession of Tiruvadi by the French was a standing menace, sent a force of 400 Europeans and 1,500 sepoy under Captain Cope to join Mahomed Ali. This combined army took up a position on the 30th July near the French force, which they found encamped on the river Punar about seven miles from Cuddalore.

Notwithstanding the overwhelming superiority of the enemy, d'Auteuil resolved to maintain his position. This was not only strong by nature, but it had been strongly fortified. To hazard an attack upon Frenchmen in a position defended by entrenchments did not suit the feeble nature of Mahomed Ali. Acting on Captain Cope's advice therefore, he moved against Tiruvadi in the hope of drawing out d'Auteuil to its assistance. But d'Auteuil was too wary to be caught by so transparent a device, and Mahomed Ali, when he wished to change the feigned assault into a real one, found that his soldiers had the same objection to stone walls as to entrenchments, when both were manned by Europeans. He accordingly marched back to his position in front of the French camp, and encouraged by Captain Cope, opened upon it a violent cannonade. The fire of the French was however so brisk and their guns were served so efficiently, that at the end of six hours the allies had had enough of it, and retreated with a considerable loss in killed and wounded. The French loss was slight; but they were too few in numbers to venture in pursuit. They contented themselves with maintaining their position, ready to profit by the disagreement which, they felt sure, would be produced by this defeat between Mahomed Ali and his English allies.

So indeed it happened. As prone to be unduly depressed in adversity as to be inflated in prosperity, Mahomed Ali thought himself not safe from the attacks of the French so long as he remained in the open country. He therefore proposed to retreat upon Arcot. The English, who wished to cut off the French from Pondichery, finding that Mahomed Ali would neither listen to their advice nor advance any more money

returned to Fort St. David. No sooner was Dupleix acquainted with this movement, than he directed d'Auteuil to break up from his encampment, and march on Tiruvadi; there to join a corps of 1,300 Europeans and 2,500 sepoys led by de la Touche, and 1,000 horse commanded by Chunda Sahib. With this force he was to surprise the camp of Mahomed Ali. This Nawab, with an army of upwards of 20,000 men of whom the greater part were cavalry, had taken up a position between Tiruvadi and Fort St. David with the river Punar in his rear, pending instructions for which he had applied to Nazir Jung. Here on the afternoon of the 11th September, the day after the departure of the English, he was attacked by d'Auteuil. The French army advanced in good order, the artillery in front, the cavalry on either wing. In this formation, in full view of the army of Mahomed Ali, the handful of men moved forward, halting occasionally to fire their guns. So long as they were at a distance, the gunners of the Nawab's army replied by an ineffective fire. But when within two hundred yards of the entrenchments d'Auteuil brought up his infantry, and ordered a general charge, the courage of the Asiatics gave way. Not an effort was made to defend the entrance into the camp; the entrenchments were abandoned as the enemy reached them; and the French, quickly bringing up their guns, opened out from one end of the camp a tremendous fire on the masses now huddled between them and the river. Unlike Chunda Sahib, Mahomed Ali shewed neither courage nor presence of mind. Here, as at Amboor, he thought only of his own safety. His men, left to themselves, behaved, as might have been expected, like sheep without a shepherd. The 15,000 cavalry who were in the camp did not strike one blow for their master. How to cross the Punar in safety was the problem each man sought to solve for his own advantage. Victory they never had dreamt of; now even orderly retreat was out of the question. Fortunately for them the river was fordable. Yet, before it could be crossed by the fugitives, they had left nearly a thousand of their number on the field of carnage. They left besides, to fall into the hands of the French, a great quantity of munitions of war, immense supplies of grain and fodder, thirty pieces of cannon, and two English mortars. The French did not lose a single man in the engagement; a few sepoys only were wounded by the explosion of a tumbril.

If battles are to be judged by their consequences, this action may truly be termed a great victory. By it, the French more than regained the ascendancy they had lost by the disastrous retreat from Valdaur; Chunda Sahib, their ally, resumed, in consequence of it, a position in which he could lay a well-founded

claim to the possession of the Carnatic; whilst his rival, Mahomed Ali, who had but two months before been master of the whole of that province,—the territories ceded to the French and English alone excepted,—was forced by this defeat into the position of a beaten and baffled fugitive, fleeing with two attendants for refuge to Arcot. The English on their part, sulky with Mahomed Ali, on the point of losing their commandant Major Lawrence, who was about to embark for England, were likewise by the same means reduced to an almost compulsory inaction, for they were not at war with France, and the dispersion of Mahomed Ali's army had left them almost without a native ally whom indirectly to assist.

It was true indeed that Nazir Jung was yet exercising the functions of the office of viceroy of the Dekkan, and Nazir Jung was their ally. Sunk in debauchery and the pleasures of the chase, Nazir Jung, however, left the direction of affairs to his ministers and nobility, and the chief of these had already,—thanks to the intrigues of Dupleix,—been won over to the interests of France. Whilst the army he had given to his *protégé*, Mahomed Ali, was being destroyed in the field, he remained inactive at Arcot, not yet thinking himself in danger, not yet believing that the army which fled before him at Valdaur would dare to compete with him in the field. Of this inaction, which he had used all his efforts to secure, and of the consternation caused amongst partisans of Mahomed Ali by the victory of d'Auteuil, Dupleix resolved to take the fullest advantage. He therefore sent instant orders to d'Auteuil to detach a sufficient force under M. de Bussy to attack Gingee, a fortress, fifty miles inland, and the possession of which would, he thought, decide the fate of the Carnatic.

The town of Gingee, surrounded by a thick wall and flanked by towers, is situated at the base of three mountains forming the three sides of an equilateral triangle. Each of these mountains was defended by a strong citadel built on its summit, and by the sides, in many places naturally steep and in others artificially scarped, by which alone access was possible. A cordon of advanced works contributed likewise to make all approach a matter of extreme difficulty. It was no wonder then that in the eyes of the natives Gingee was deemed quite impregnable. Even Sevajee, the ruthless founder of the Mahratta power, had been forced, in 1677, to come to an understanding with its commander to effect its reduction, and Zulfikar Khan, the general of Aurungzebe, had brought about the same result by means of a blockade of the strictest nature. The belief in its impregnability made it always the refuge of defeated armies, and the scattered

parties of Mahomed Ali's force, to the number of 10,000 or 12,000 men, had fled to it after the battle on the Punar for that protection which it was deemed so well able to offer. Against this,—the strongest of all the fortresses of the Carnatic,—Dupleix directed d'Auteuil to send a detachment with all possible speed, indicating at the same time Bussy as the commandant of whom he would approve for such a service. This is not the first time that we have met with this officer. He it was,—it will be recollected, who, when the French troops had twice recoiled before the entrenchments thrown up by Anwarooddeen at Amboor, when their commandant, d'Auteuil, had been struck down, rallied the repulsed infantry, and led them, the third time, victoriously to the charge. But little is known of his early childhood,*—a strange circumstance when it is recollected that he occupies a principal figure, in the estimation of some the foremost figure, in the history of the French in India. This much however is ascertained,† that he had lost his father at an early age, and inheriting little beyond his pedigree, he had come out to the Isle of France at the time that La Bourdonnais was governor, and had formed one of the expedition led by that famous admiral to India in 1746. When La Bourdonnais returned to Europe at the end of that year, de Bussy remained behind as an officer of the Pondichery army. Here he found himself constantly in contact with Dupleix, and, in their frequent meetings, he had not been less struck by the large views and brilliant genius of the Governor-General than had been Dupleix by the noble nature, the striking talents, the desire to acquire knowledge, especially knowledge of India and its people, displayed by the young officer. He had given many proofs of adding to these qualities a courage, a daring, and a presence of mind, which, when united in a soldier, inevitably lead him to fortune; and it was on this account that he had now been selected to lead a detachment of the French army on the most daring expedition on which European troops had yet been engaged in India.

The force placed at the disposal of Bussy consisted of 250 Europeans and 1,200 sepoy, and four field pieces. They left the scene of the action with Mahomed Ali on the 3rd September, and came in sight of Gingee on the 11th. Here at the distance of three miles Bussy encamped, and here intelligence reached him that the remnants of Mahomed Ali's army, 10,000 or

* Even that admirable work, the *Nouvelle Biographie Générale*, throws no light on this point.

National Review, Vol. 15., Art. *Dupleix*.

12,000 strong, together with 1,000 sepoy trained by the English, and some European gunners with eight field pieces were encamped on the glacis, and were about to take advantage of their overwhelming superiority of numbers to attack him. Immediately afterwards the enemy were seen advancing. Bussy waited for them till they came within pistolshot, when he ordered a general advance, the four guns opening at the same time on the enemy's cavalry. This, as was usual, not only prevented their advance but threw them into confusion. They had already broken when the main body of the French army under d'Auteuil was seen approaching the field. A general panic instantly ensued amongst all branches of the enemy's forces, and Bussy, taking advantage of it, advanced and secured their guns, killing or taking prisoners the Europeans who served them. He then pushed forward and drove the fugitives under the walls of Gingee, the cannon of which opened fire on the pursuers.

But it did not stop Bussy. Following the fugitives to the entrance of the town, he applied a petard to the principal gate and blew it in. He at once rushed forward, sword in hand, followed by his men, and engaged in a desperate hand to hand contest with defenders. Nothing however could resist French gallantry. Before night-fall the place was their own, and it was occupied during the night by the remainder of the force under d'Auteuil. Their situation was, nevertheless, still one of great danger. We have already stated that the town of Gingee lies at the base of three mountains, the summits of which were strongly fortified. From these summits these poured in now an incessant fire on the French in Gingee. Small arms, grape, round shot, and rockets were used with all the vigour of which the garrison were capable. For some time Bussy replied by a fire from his mortars, keeping his men under cover. But no sooner had the moon gone down than he moved out three detachments of picked troops, all Frenchmen, to escalade the three citadels at the same time. The ascent was steep; redoubt after redoubt hindered their progress; a terrific fire rained upon them from all sides; but no obstacle was too great to be overcome by Bussy and his comrades. The storming of one redoubt filled them with the greater determination to attempt the conquest of another; their onward progress gave them fresh animating power, whilst the defenders after each loss became more and more discouraged. At last mounting higher and higher, they came to the citadels. These too, just as day broke on the horizon, fell into their hands, and the victors could gaze and wonder at the almost insuperable difficulties which they nevertheless had surmounted.

It was indeed a wonderful achievement,* great in itself, and calculated by its effect upon the people of Southern India to be much greater. They could be no second-rate warriors who could, within twenty-four hours, defeat an army vastly superior in numbers, and storm a fortress reputed impregnable, and which for three years had defied the best army and the best general of the renowned Aurungzebe. Not lightly would such a feat be esteemed in the cities of the South. The fame of it would extend even to imperial Delhi on the one side, and to the palaces of Poona on the other. It was a blow, which by the intrinsic advantages resulting from it and by the renown it would acquire for those who delivered it, would strike down not only Mahomed Ali but Nazir Jung, would seat the nominees of Dupleix at Goleonda and Arcot, would bring Delhi itself almost within the grasp of the French governor. Yes, well followed up, using carefully yet vigorously every opportunity, this capture of Gingee might indeed be made the first stone of a French Empire in India.

The immediate results of the capture on the minds of the natives were all that could have been expected. Nazir Jung, till then devoted to pleasure, now roused himself to action. Yet even he, the viceroy of the Mogul, the disposer of an army of 300,000 men, was thunder-struck at the feat. These French, he felt, must be beaten or conciliated. It appeared to rest with him whether he should attempt the first, or accomplish the second, for almost simultaneously with the news of the fall of Gingee intelligence reached him that d'Auteuil was marching on Arcot, and he at the same time received peaceful overtures from Dupleix. The principal of these suggested the release of Mozuffer Jung and his restoration to the governments he had held in his grandfather's life-time, the appointment of Chunda Sahib to be Nawab of Arcot, and the cession of Masulipatam to the French. It is probable that Nazir Jung would have made no difficulty regarding the second and third of these conditions, but the release of Mozuffer Jung was tantamount to a renewal of a civil contest, and rather than assent to that, he preferred to try the fortune of war. Summoning then his chiefs to Arcot, he set out at the head of an army consisting of 60,000 foot, 45,000 horse, 700 elephants, and 360 cannon, in the direction of Gingee. When however he had arrived within twelve miles of the French force,—which, after making one or two marches in the direction of Arcot, had returned on the news of the approach of the enemy to Gingee,—the periodical rains set in with such violence that any movements in the face of an enemy became impossible. An inaction of two months' duration, from September to the beginning of December,

succeeded, the French army remaining encamped about three miles from Gingee whence, for some weeks, it drew its supplies. When they had been exhausted, it received them, thanks to the excellent arrangements of Dupleix, and despite the unsettled state of the country, direct from Pondichery. Nazir Jung, on his side, was forced to remain in a most inconvenient position, hemmed in by water-courses swollen by the rains, and able to obtain supplies only with the greatest difficulty.

But these two months of military inaction constituted a busy period to Dupleix. Corresponding secretly with the chiefs of Nazir Jung's army, he had succeeded in persuading many of them, especially the Patans and the Mahrattas, that it would be more to their interest to regard the French as friends than as enemies. Both these sections had several causes of dislike to Nazir Jung. His manifold debaucheries, the treatment, after his solemn promise to grant him liberty, of Mozuffer Jung, his constant refusal to entertain the propositions for peace, and the knowledge, that with Mozuffer Jung upon the viceregal seat, they would enjoy not only peace and alliance with the French, but an accession of honours and dignities, all conspired to whet their desire to be rid of him. On the other hand, their admiration, mingled with fear, of the French nation and especially of the statesman who was so daringly guiding its fortunes, gave to the proposals of Dupleix a weight which they found it difficult to resist. A secret agreement was accordingly arrived at between the two parties, which stipulated that if Nazir Jung should refuse any longer to agree to the terms offered by Dupleix, but should decide upon marching against the French, the malcontent nobles should withdraw their forces from those of their feudal superior, and should range themselves, a short distance from them, under the flag of France. To such an extent were the details of this arrangement carried out, that a French standard was secretly conveyed to the malcontents, to be by them on the proper occasion hoisted on the back of an elephant in the most conspicuous part of the field. Other secret arrangements were at the same time entered into between Mozuffer Jung and the conspirators, with which Dupleix had no concern. There can be little doubt but that the death of the Subadar and the distribution of his treasures equally between Mozuffer Jung on one side, and the conspirators on the other, were resolved upon.

But meanwhile better thoughts had come over Nazir Jung. The difficulties of his army, the fear of finding himself engaged in a long and doubtful campaign with an enemy whom all that he had heard and knew caused him to dread, and, above all, the

deprivation of much loved pleasures which this campaign would necessitate, induced him to re-consider the terms repeatedly pressed upon him by Dupleix. To these he had given no reply. But when the fine days of the early December shewed him that the time had arrived when action could not be avoided, he determined to yield everything, to set free Mozuffer Jung, to yield Masulipatam, to appoint Chunda Sahib,—to make any concession, in fact, so that he might be free to drain the cup of pleasure. He accordingly wrote to Dupleix, offering to agree to his terms. With this letter he sent three of his officers provided with full powers to negotiate, for the purpose of signing the treaty. Dupleix, caring little with whom the treaty was made, provided only that his own propositions were agreed to, determined to accede to the offers of Nazir Jung, and wrote at once to the commander of the French forces to suspend all hostilities until he should receive further instructions. His orders however arrived too late. M. de la Touche, upon whom the command had devolved in the absence of d'Auteuil laid up with the gout, had, before this letter reached him, received from the conspirators the signal he had preconcerted with them to advance. They were in fact acquainted with the contents of the letter sent to Dupleix, and justly feared that, if time were allowed, it would interfere with their long-meditated plans. Hence the sudden resolution to bring matters to a crisis and their call upon the French general to perform his part. Ignorant of the negotiations going on at the time at Pondichery, de la Touche had no option. In compliance therefore with instructions which had been given him as to his action in the event of his receiving such a summons from the conspirators, he set out on the night of the 15th December from Gingee at the head of 800 Europeans, 3,000 sepoys, and ten guns, in the direction of the Subadar's camp, under the guidance of a native who had been sent for that purpose by the conspirators. After a march of sixteen miles, de la Touche at 4 o'clock in the morning came in sight of the enemy. Their advanced posts which gave the alarm were soon dispersed, and de la Touche found himself with his 3,800 men in front of an army of more than 25,000. By the skilful management of his guns however he succeeded in keeping at bay, and eventually throwing into confusion, the vast masses of cavalry which were constantly threatening to charge him. No sooner were these dispersed than he advanced on the infantry, and after a very severe contest, succeeded in breaking them. But this had hardly been accomplished when he perceived a body of at least 20,000 men advancing on his left flank. At the sight of this new enemy the French began

almost to despair of success, but as they advanced nearer, de la Touche discovered to his joy the French standard displayed on the back of the foremost elephant; almost immediately afterwards a messenger from Mozuffer Jung conveyed to de la Touche the intelligence of the success of all the plans of the conspirators.

Nazir Jung in fact, relying on the full powers with which he had accredited the envoy he had sent to Pondichery, would not believe that they were French who were attacking him. When it would no longer admit of a doubt, he sent orders to his generals to repulse, 'this mad attempt of a parcel of drunken Europeans,'* whilst, seated on his elephant, he took his station amongst his guns. Near him, on another elephant, was seated Muzuffer Jung under the guardianship of an officer who had received instructions to behead him on the first appearance of treason. In the midst of the action, seeing some of his men retiring from the field, the Subadar enquired and learned that the Patan Nawabs, the Rajah of Mysore, and the Mahrattas, had ordered their troops to abstain from any participation in the action. Enraged at this, he started on his elephant to threaten them, first giving orders for the beheading of Mozuffer Jung. The Nawab of Kuddapa, whom he first met and upbraided, replied by a defiant answer, and directed his attendant to fire at the Subadar. As the piece however missed, he unslung his own caroine, and shot Nazir Jung through the heart. The Subadar's head was instantly cut off and laid at the feet of Mozuffer Jung, whose own had just escaped a similar ceremony.†

This was the intelligence conveyed to M. de la Touche by the messenger of Mozuffer Jung, just after the French, to their delight, had beheld their national standard displayed on the foremost elephant of the advancing party. The first act of the French leader was to despatch his second in command, de Bussy,—although he had been wounded in the fight,—to congratulate the new Subadar on his elevation. Bussy found the newly made potentate seated on the splendidly caparisoned elephant of his late rival, acknowledged as the Mogul's viceroy, not only by the conspiring nobles, but by all but a very small minority of the army which but a few hours before had obeyed the orders of Nazir Jung. The same evening M. de la Touche himself accompanied by his principal officers paid a congratulatory visit to Mozuffer Jung, and received from him the commission to

* Orme.

† He simply owed his escape to the fact that the officer in whose charge he had been placed was one of the conspirators—*Dupleix*.

inform Dupleix that nothing would be undertaken without his advice, to obtain which he, Mozuffer Jung, purposed instantly to proceed to Pondichery.

Whilst matters had thus progressed in the field, Dupleix had been awaiting in Pondichery the return of the messenger he had sent to the army to direct the suspension of hostilities. But before that messenger could return, the intelligence of the great victory and its results reached the town.* The excitement, the joy, the enthusiasm may be imagined. That the French might have entered into a satisfactory arrangement with Nazir Jung had been hoped. But every bound of reasonable expectation was exceeded when it was known that, owing to the exertions of 800 Frenchmen, and 3,000 sepoys trained by them, the *protégé* of France had become the ruler of Southern India, the lord over thirty-five millions of people. Still greater was the national exultation when it became known through a brief despatch from M. de la Touche how modestly Mozuffer Jung bore his triumph; how deferentially he acknowledged his obligations to the French people; and how submissively he had announced his intention to do nothing until he should have communicated personally with the great ruler of French India. The fire of artillery, the chanting of *Te Deums*, illuminations, processions, and durbars, announced all the joy which these occurrences inspired.

Well, indeed, might the French in India feel a pride in their success. Not seventy-six years had elapsed since Francois Martin at the head of sixty Frenchmen had brought the plot of ground on which had since risen the city of Pondichery, and we find his successor in a position to give laws to thirty-five millions of people! Though besieged and taken by the Dutch, though besieged but two years before by an immensely superior force of English, Pondichery had risen to see the decadence of one nation as a rival on Indian soil, and the compulsory inaction and loss of reputation,—both indeed destined only to be temporary,—of the other. The genius of the people had suited itself so well to the natural temperament of the children of the soil, that the French were regarded everywhere as friends; the increase of their territory excited no jealousy. Their policy had been a policy of fidelity and trust. The intimacy of Francois Martin with Shere Khan Lodi had been continued by his successors to the family of Dost Ali. Neither the overthrow of that Nawab, nor the captivity of his successors had been able to shake it. To support that traditional alliance, M. Dumas had bade defiance to the threats

* Mr. Orme states that it was conveyed in person by Chunda Sahib to Dupleix.

qualities which, in that rude day, the princes of Asia could admire though they could not imitate. From such an one, practising such lofty sentiments, there was nought, they would believe, for them to fear. That one act of abnegation was sufficient to make them acquiesce without envy, without the least hesitation or doubt, in the substantial acquisitions that had been made that day to Dupleix. He indeed was the hero of the day's ceremony. He emerged from that tent the acknowledged superior of the lord of Southern India.

We have not yet enumerated all the advantages which accrued to the French on the occasion of this visit. In addition to those promulgated by Mozuffer Jung at the time of his installation, one sum of five hundred thousand rupees was made over to Dupleix for the soldiers who had fought at the late battle; another of the same amount was repaid to the Company, on account of moneys that had been advanced, and security given for the amount remaining due. The increase of revenue likely to accrue to the French Company by the territorial cessions we have adverted to, was computed at little short of 400,000 rupees annually. To commemorate these great results thus obtained, Dupleix ordered the creation of a town on the site of the battle which had caused them, to be entitled Dupleix-Futteh-abad.* This design, founded on sound policy, being in strict conformity with those native usages by which alone the mass of the people were likely to be impressed, and not, as has been ignorantly charged against him, on ridiculous vanity, was not, it is true, destined to be realised. Events were too strong even for this strong man. He, the pioneer of European conquest and European civilisation, whose vast plans were not, as so many of his contemporaries believed, too vast to be accomplished, was yet destined to see them appropriated to a great extent by his rivals. It will be for us, very soon, to enquire and to search out the one weak point in that strongly welded armour,—the one part wanting in that almost consummate genius, by means of which one great adversary, possessing the quality wanting to Dupleix, shattered the vast fabric of his plans ere yet they were proof against attack.

Not only the urgent and pressing instructions from the French East India Company, but his own conviction of the necessity of the case, disposed Dupleix at this period to consolidate his conquests by a definite peace. Peace however was utterly impossible so long as the rival candidate for the Nawabship of the Carnatic, Mahomed Ali, was at large maintaining his pretension. This chieftain, seeing that by the death of Nazir Jung,

* Indicating "The place of the victory of Dupleix."

his chances of dominion had been reduced almost to zero, abandoned by the English, and without following, had fled, on the news of the defeat, to Trinchinopoly, behind whose walls he had once before found refuge. Dupleix, who had on that previous occasion experienced the delays and difficulties attending the attack by a native army on a fortified town, was particularly anxious to induce the fugitive nobleman to enter into some arrangement, by which, in virtue of some concessions made to him, he would engage to recognise the new order of things. He was the more hopeful that negotiations to this effect might succeed, as Mahomed Ali was now literally abandoned by all the world. To his gratification and surprise the first overtures for this object came from Mahomed Ali himself. Rajah Janojee, one of the Mahratta leaders who had been with Nazir Jung, and had subsequently transferred his temporary services to his successor, was charged by Mahomed Ali with a proposal to recognise Chunda Sahib as Nawab of the Carnatic, and to make over to him the city of Trinchinopoly and its dependencies, on condition (1) that he should be put in possession of the treasures left by his father, no enquiry being made into his administration, (2) that the Subadar should engage to give him another government in the Dekkan. Dupleix eagerly embraced these terms, and requested Janojee to inform Mahomed Ali of his acceptance of them. This led to the opening of a correspondence between the French governor and Mahomed Ali, throughout which the latter ardently expressed his desire to be reconciled to the Subadar.

This important matter being regarded as settled, Mozuffer Jung, not doubting that peace would henceforth reign in the Carnatic, informed Dupleix of his intention to proceed to the northern part of the Dekkan, as well to consolidate his power, as to settle divers matters which in consequence of the war had fallen into great confusion. But he represented at the same time to Dupleix that, in order to undertake, with safety and success, a journey across provinces which had been so recently hostile, it would be very desirable that a body of French troops, upon whom he knew he could rely, should accompany him. He expressed himself willing to defray all the charges connected with these troops, and, he added, he would not send them back before he had given to them, as well as to the Company they served, real marks of his gratitude.

This proposal chimed in exactly with the policy of Dupleix. It assured him against any change of policy in the councils of the Subadar. It made him virtually master of the Dekkan, ruling Southern India through the representative of the Mogul. He consented therefore to the proposal. Perhaps if he had known

of Ragoojee Bhonsla, and his, till then, irresistible Mahrattas; Dupleix had, for seven years, fed the hopes of the imprisoned Chunda Sahib with the prospect of a throne. And now, this policy had blossomed and borne fruit. Chunda Sahib, released from captivity by the efforts of Dupleix, had made common cause with Mozuffer Jung, the claimant of the viceregal dignity in the south of India, and, after many reverses, the two friends,—thanks to French generalship and French valour,—seemed to have attained the summit of their very highest wishes.

The glory which M. Dupleix had acquired by this successful policy attained its most dazzling elevation when, on the 26th December following, Mozuffer Jung and his followers arrived at Pondichery. Entering the town in the same palanquin with the French governor, this ruler of thirty-five millions paid him in outward appearance the homage and respect due to a feudal superior. He at once made over to him all the treasure, the jewels, the gold and silver ornaments found in the camp of his late rival, and requested him to assume the office of arbitrator between himself and his confederates, the Patan Nawabs, with whom already misunderstandings had broken out. Dupleix in this trying position was true to the traditional policy of the French in India. It was a main portion of that policy to respect native customs, to conciliate native opinion, to rule by means of that rather than by force, to be liberal, generous, trustful, confiding. His position as the secret ruler of the Dekkan, directing all its resources, surely yet unostensibly, by means of its native ruler, keeping his own power, of the superior might of which he was assured, necessarily in the background, was in his opinion more strong and more really powerful, than if he had claimed for himself the ostensible dignity, and with it a territorial extension such as would provoke the jealousy of those even who granted it. His first act therefore was to disclaim for his own part any share in the booty taken after the victory. This, he decided, in his quality of arbitrator, should be divided equally between Mozuffer Jung on one side, and the confederate Nawabs on the other, reserving the jewels only without division to Mozuffer Jung. Any claim which the French might have upon the latter for the part they had played in helping him to his dignities, he left entirely to his own generous impulses.

Having thus, and by some other arrangements, which it is unnecessary to detail, effected an amicable settlement of all misunderstandings, Dupleix prepared for the solemn investiture of Mozuffer Jung, as Subadar of the Carnatic, in the presence of his tributaries and vassals. This imposing ceremony,—a ceremony noticeable as indicating the period when French

power in India had almost attained its zenith,—took place in a magnificent tent pitched in the great square of Pondichery. The splendours of that day, the honours granted to Dupleix, the high position he assumed, have scarcely yet been obliterated from the traditions of Southern India. Let us imagine, as we well can, either side of the gorgeously draped tent lined by the armed nobility of the Dekkan. Mozuffer Jung enters and takes his seat at the head of the assembly. Quickly behind him follows the governor of French India, and presents to the Subadar, as he salutes him, the offering due to his rank. Mozuffer Jung advances to meet the French governor and places him on a seat designedly set there, and betokening a rank equal to his own. To them, thus seated, though nominally only to the Subadar, the assembled nobles offer their gifts. On the conclusion of this ceremony, the Subadar rises, and proclaims the honours he proposes to confer on his French ally. He declares him Nawab or Governor of the country south of the river Kistna up to Cape Cormorin, including Mysore and the entire Carnatic; he bestows upon him as a personal gift the fortress of Valdaur, about fifteen miles from Pondichery, with the villages and lands dependent upon it, as well as a separate Jaghire of 100,000 rupees a year. He confers upon him the title of *munsab*, or commander of 7,000 horse, with permission to bear the ensign of the fish, one of the highest honours in the Mogul empire. He directs that the Pondichery currency shall be the sole currency of Southern India: he confirms the sovereignty of the French Company over the newly-acquired districts of Masulipatam and Yanoon, and an extension of the territories about Karikal. Then, turning to Dupleix with the air of a vassal to his liege lord, he promises never even to grant a favour without his previous approval, and to be guided in all things by his advice. Dupleix, on his side, is true to himself, to his policy, on this tempting and trying occasion. With a generosity which, if assumed, shews his political fitness in a still stronger light, he calls up Chunda Sahib to his side, presents to the Subadar his old and tried companion, and urges that if he himself is to hold the nominal dignity of Nawab over the country south of the Kistna, the real sovereignty and emoluments of that part of it known as the Carnatic may be bestowed upon one who had shewn so much steadfastness and fidelity. We can well imagine the impression that would be conveyed to the minds of an Oriental assembly by an act so generous and graceful. He who could thus give away kingdoms, who, in the height of his prosperity could recollect and reward those who under all circumstances had been true to him, shewed the possession of

the secret intentions which Mahomed Ali still cherished, he might have delayed the departure of his troops until the affairs of the Carnatic and its dependencies had been quite settled. But he had excellent reasons for believing that Mahomed Ali had entered into his schemes; that he would resign Trinchinopoly in favour of a government elsewhere. Had he not been satisfied with the assurances he had received on this head, it is certain he would not have detached so far from Pondichery a considerable contingent of his little army, and—what was of far greater importance—his best officer to command it. But, as it was, believing peace re-established, anxious to have French interests powerfully represented at the court of the Subadar, and not indifferent to the financial considerations resulting from the transfer to another exchequer of all the charges connected with the troops thus detached, he agreed to send with the Subadar to Aurungabad, his capital, a force of 300 Europeans and 2,000 sepoys, the whole under the command of Bussy. For such a purpose, or indeed for any office, political or military, a better selection than that of Bussy could not have been made; but in sending him, d'Auteuil being still incapacitated by sickness and de la Touche having died, Dupleix deprived himself of the one man upon whom he could depend in the event of any unforeseen military disaster.

On the 7th of January 1751, Mozuffer Jung left Pondichery to join his army, and on the 15th, in pursuance of the agreement he had entered into with Dupleix, he was joined by Bussy and the French contingent. At the end of about three weeks they entered the territories of the Nawab of Kuddapah, who was himself with the army. Here a tumult, apparently accidental, but really preconcerted, occurred between some troops belonging to the army of the Subadar and some villagers. The Nawab of Kuddapah hastened to support his tenants, and attacked the rear-guard of the main body of the Subadar's army, that being the part of the force with which the ladies of his harem travelled. Mozuffer Jung, enraged at this insolence, determined to avenge it, but wished, in the first instance, to assure himself of the countenance and support of Bussy. The orders given to this officer had been to avoid, as much as possible, all appearance of hostility, and in accordance with these, he addressed himself to the task of bringing about an accommodation between the two angry chieftains. But it soon appeared that the Nawab of Kuddapah had allied himself with the Nawabs of Kanoul and Savanore against their former confederate, Mozuffer Jung, and that although anxious, if possible, to avoid hostilities with the French, they were resolved to seize the opportunity of one of the

confederates being within his own district, to effect the destruction of the Subadar. Mozuffer Jung had no sooner satisfied himself regarding their plans than he ordered out his troops to attack them, calling upon Bussy to support him. This Bussy, who considered himself bound to side with the Subadar against traitors, promised to do. Mozuffer Jung, without waiting for the slower march of the infantry, at once attacked the confederates with his cavalry. An obstinate contest ensued, many being killed on both sides. The confederates, however, maintained the position they had taken up, until Bussy and the French contingent arrived on the ground. A few rounds from their artillery and a general advance of their infantry decided the day. The rebel army broke, fled, and dispersed, leaving the Nawab of Savanore dead on the field, and taking with them the Nawab of Kuddapah, grievously wounded. Mozuffer Jung, indignant at the idea that he, the principal conspirator, should escape, outstripped his French allies to pursue him on his elephant. In his headlong course he came upon the third confederate, the Nawab of Kanoul. A desperate hand to hand contest ensued, in the course of which the newly made Subadar, Mozuffer Jung, was thrust through the brain by a spear, whilst his antagonist, the Nawab of Kanoul, was instantly afterwards hacked to pieces.

The death of Mozuffer Jung, Subadar of the Dekkan, was in itself a severe, and might have been a fatal blow to the policy of Dupleix. In his person was struck down the main defender of the French alliance, the man who had personally experienced the advantages to be derived from French wisdom and French valour, the personal friend and *protégé* of Dupleix. No successor could occupy the position he had occupied with reference to French India. It was indeed possible that the government of the vast possessions he had inherited only to lose might devolve upon a minor, or a declared antagonist, who might repudiate all the engagements and cancel all the advantages to which Mozuffer Jung had agreed. Under these circumstances the wisdom evinced by the selection of Bussy became apparent. Feeling that to secure French interests it was necessary for him to act, and act on the moment:—that it was essential that the chiefs and the army should not be left in doubt as to their ruler, but that a man should be appointed equally agreeable to them and to the French, Bussy, with the concurrence of the principal officers of the army, set aside the infant son of Mozuffer Jung, and at once proclaimed the next brother of the old Subadar Nazir Jung, Salabut Jung by name, as viceroy of the Dekkan for the emperor Ahmed Shah. From a throne to a prison, from a prison to a throne constituted in those days, a condition of affairs which might almost,

be termed normal. Salabut Jung was no exception to the rule. He was taken from confinement to rule over thirty-five millions of his fellow-creatures.

The first act of the new viceroy was to confirm all the concessions which his predecessor had made to the French. His next was to add to them. In gratitude, we may suppose, for his elevation, he adjoined to the French possessions at Masulipatam the lands attached to the villages of Nizampatnam, of Condore, of Alemenava, and of Narsapore in its neighbourhood. He ordered the re-building of all the factories at Yanoon which his brother, Nazir Jung, had destroyed; and finally he presented to Dupleix the territory of Mafoosbundur in the district of Chicacole. A few days later the army resumed its route, stormed on the 18th March the fortress of Kanoul, the residence of the deceased rebel Nawab of that title; bought off the threatened hostilities of the Mahratta Bajee Rao by a present of two lakhs of rupees; reached Hyderabad on the 12th April; remained there a month, and finally made a triumphant entry into Aurungabad on the 29th June. Here Salabut Jung in the presence of Bussy and all the nobles of the province was solemnly invested as Subadar of the Dekkan on the authority of a firman stated to have been received from the imperial court of Delhi, but which, there can be no doubt, was a forgery. Here we must leave him, and with him, for a time, the indefatigable Bussy, revolving, and not only revolving but carrying out, great schemes which, had all gone well in the Carnatic, would, there can be no question, have brought forth abundant fruit in their season.

We can leave them indeed with the greater satisfaction at this conjuncture, because it constitutes the period at which French domination in India may be said to have attained its zenith. A glance at the map of India will shew the enormous extent of territory which, in the spring of 1751, was subject to French influence. The entire country between the Vindya mountains and the Kistna, exceeding the limits of the territory now known as that of the Nizam, was virtually ruled by a French general. A French army occupied the capital; French influence predominated in the viceregal councils. To the north-east of Hyderabad, the coastlands, situated between the river Mahanuddy and the Godavery, known as the Northern Circars, and south of that, the country between the Godavery and the Kistna, were secured to the French by means of the possession of the towns of Masulipatam and Yanoon, and of the provinces of Montfanagar, of Ellore, of Rajahmundry, and of Chicacole. South of the Kistna again, the governor of French India had been constituted by the Mahomedan viceroy of Southern India Nawab of the entire country,—

a country comprehending, be it remembered, the entire Carnatic, the whole of Mysore, the kingdoms of Tanjore, Trinchinopoly, Cochin, and the provinces of Madura and Tinivelly. If indeed the French governor did not hold these places under his own sway, it was mainly because it was a part of his settled policy to keep his authority in the background, and to govern through the princes of the country. It was for this reason that he had made over the Carnatic to Chunda Sahib, and contented himself with exercising a moral influence, amounting, in fact, to a real supremacy, over the others. But in the beginning of 1751, his power was so far established that there was nowhere a sign of opposition. Mahomed Ali, the rival of Chunda Sahib, had promised submission and obedience, and had consented to retire from the stronghold of Trinchinopoly. The English, thus deprived of all pretext for interference, were sulking at Madras and Fort St. David. Their presence, it is true, constituted a thorn in the side of the French ruler, but his hands too were withheld from attacking them, and the utmost he could aim at was to bring about such a state of things in Southern India, a condition of such universal acquiescence in French arbitration, as would leave them without consideration and without power. Armed with the promise of Mahomed Ali to agree to the conditions that had been proposed, he seemed almost to have brought matters to that point in the spring of 1751.

To us, who, after the fall of the French power in India, required forty years of hard fighting to gain a position equal in influence to that which Dupleix had acquired after an administration of less than ten years' duration, these results may well appear marvellous. For a solution of them we must look to the character of the man himself. His mental resources appear perfectly inexhaustible. Difficulties seem to occur merely that he may find means for riding over them. Whether it is a repulse in the field, a mutiny of his troops, the defeat or defection of an ally, he is prepared for all, ready to remedy all. Nay more, a repulse is to him always the prelude for a further advance. Uniting with extreme prudence the readiness to greatly dare, he never fails to trust Fortune, at the same time that he exhausts every effort to make her his ally. Who but he would have sent Paradis to bid defiance to the hitherto unconquered armies of the representative of the Mogul? Who but he would have ordered the attack on the impregnable Gingee? Who but he would have sent Bussy with but three hundred Frenchmen into the heart of Southern India, then a *terra incognita* to Europeans? A march of a handful of Europeans from Pondichery to Aurangabad was considered in those days as wild and as dangerous a

project, as would in these the despatch of a detachment from Peshawur to Bokhara. His directors condemned it, France cried out against it, but Dupleix insisted upon it. It was, he well knew, the lever by which, Chunda Sahib being master of the Carnatic, he could shake even the throne of the Mogul.

It is very well for those who are wise after the event to declaim against the vastness of his schemes, and to aver that sooner or later they must have broken down. We cannot share that opinion. We believe, on the contrary, that under ordinary circumstances, his success would have been certain. Had he had but ordinary men to deal with, nothing could have stopped him. Had he even had another Bussy to support him, the chances would have been greatly in favour of his ultimate triumph. Had he even, if we may so far anticipate, not been re-placed in his government at a most critical period of his fortunes, the soundness of his policy might even then have been verified. But it was written that India was not to become French. The history of the world abounds with instances in which everything turns on the action of an individual man. Had Ferdinand of Gratz never been born, the Austrian Empire would have been for three hundred years the mainstay of Protestantism. Had Gustavus Adolphus never been born, that same Ferdinand would have brought all Germany under the yoke of the Jesuits. Charles I had his Cromwell, Louis XIV his Marlborough. It was fated too that the high-soaring Dupleix should meet with his Clive.

As yet, however, whilst Bussy is marching on Aurungabad,—the dictator of the Dekkan,—everything seems to smile on the daring statesman who, from his palace in Pondichery, directs every movement on the board, and to him thus triumphant, to him who in ten years has made Pondichery the centre point of Southern India, we cannot refuse the expression of our admiration of his soaring genius, his untiring energy, his vast and comprehensive intellect.

ART. IV.—THE NATIVE PRESS OF BENGAL.

IN promoting education in India, one and not the least important of the avowed objects of the Government was to form an intermediate class, which would be able to act as the interpreter between the ruling power and the people of the country, and prevent, as far as possible, those lamentable mistakes and misconstructions of our motives which have been only too frequent. One of the first and most obvious consequences of the formation of this class has been the growth of a press, modelled more or less on the European system, and discussing the acts and intentions of Government with a freedom and independence which their elder brethren cannot surpass.

No object of a government has ever been carried out more surely or speedily than that which we have just named. The educated class and its inevitable corollary, the press, have, at any rate in Bengal, carried out the work designed for them with an alacrity as great as their most enthusiastic supporter could have desired. Whether they have done so in the style and tone most congenial to the Government which watched over their infancy might be questioned, but that they have done their part *con amore* is undeniable; an unfailing class instinct has pointed out to them that the rôle of interpreting the views and wishes of the Government of the country to the people, and by consequence of interpreting the views and wishes of the people to the Government, assigns to them an influence and importance second only to that of the Government itself, and in some respects even superior to it.

Nor has the policy of Government in the preparation and publication of a weekly abstract of the vernacular press, and still more in frequently calling on its officers for reports on subjects commented on by that press, had the tendency to diminish this importance. It might even be questioned whether the effect has not been detrimental in bestowing on private and anonymous critics an influence greater than was expedient; be this as it may, the result is that the native press, as a whole, is now sufficiently powerful and important to justify the attention we propose to bestow on it in this article.

The utility of an institution like the native press is two-fold. It is valuable not only as affording the Government an insight into the arguments by which the writers in it are able to support their views, but still more as showing what those views are. Hence in assigning importance to this press, we are by no means forced to extol the ability or integrity of its principal organs, for it equally serves the latter purpose whether its columns are well or ill written, whether they are filled with sound and moderate reasoning or vapid and wordy nonsense.

In many, in fact the greater part, of the subjects which come under discussion, the comments of the native papers are as varied and antagonistic as those of the press in England; with the addition perhaps that it is difficult to trace any definite line or policy in their antagonism, but they take up their line of argument according to the temper of the hour, or the views of the particular writer. In all such cases we may assume with tolerable confidence, that there is no serious grievance to be remedied. When persons begin to form conclusions on argument, they have seldom any pre-conceived opinions strong enough to supersede argument; and where we find the *pros* and *cons* stated with tolerable fairness, and opposite conclusions arrived at, it is a sure indication that no great national interest or prejudice is affected.

There are however, certain questions on which the whole of the native press re-echoes in substance one and the same opinion, subjects to which they are always recurring on every possible occasion with a perfect unanimity of views; in such cases it cannot be doubted that whether right or wrong, justifiable or unjustifiable, the views advocated are those not only of the writers, but even more of the readers of the papers, and the discussion of such points as these must always be the most interesting to those who are desirous to learn how the natives criticise our administration, and in what quarters their real or imaginary grievances are to be found. If this test be accepted, some of the abuses which Europeans are accustomed to regard as the most vulnerable points of our administration, do not appear to deserve the position assigned to them.

Most conspicuous among these is the administration of justice in the Mofussil courts. From the manner in which some persons speak and write on this subject, it would seem as if the incapacity, ignorance, and carelessness of the local courts were a disgrace to our Government, and made our rule almost insufferable. Such, however, appears to be by no means the case, if we adopt the proposed criterion. Among

the complaints of the native press, the incompetency of our courts holds a very subordinate place; occasionally when an unpopular offender is let off, or when a sort of representative man among Bengalees of the new school is convicted, there is a little flash, and an article or two modelled on the fashion of the English press on the same subject; but the general tone in speaking of such matters appears to be one of comparative indifference, and when judicial officers are referred to, it is nearly as often in praise as in condemnation.

In fact, when we consider what are the requisites for a judicial officer in this country, and to what extent they are found in the generality of the persons who occupy that position, it would be strange were it otherwise. The more reliable is testimony, the easier and less important becomes the labour which is brought to bear on the determination of matters of fact; the more complicated and scattered is the law, the more requisite does an intimate knowledge of it become. Now in England the trustworthiness of evidence reaches its maximum; doubtless it is easy enough to procure false evidence at the large central courts, and plenty of it is procured, but such witnesses are generally confined to disreputable cases, they are easily seen through, and are relatively obtuse* and clumsy, compared with their confraternity in India. Moreover, the better and more truthful classes do not as a rule avoid the courts, and it will not be contested that trustworthiness may fairly be attributed to English evidence on the whole. Hence the discrimination of facts is generally regarded by Englishmen as the element of inferior importance in the administration of justice. On the other hand, there is scarcely any other country in the world where the law was till recently, so intricate and uncoded as in England, hence the corresponding accession of importance to the legal element,—an importance which naturally reaches its maximum, when it is considered that every decision on a question of law becomes of national interest, where law is almost entirely case-made. In India, on the contrary, the law

* This statement may be thought incorrect, as a clever cross-examination almost always discredits a native witness. This, however, proceeds not from their want of invention or ability, but from that habit of overstatement and exaggeration, which equally distinguishes a true witness. What native witnesses excel in, is the power of concocting stories so cleverly, and recounting them so confidently, that they cannot be detected. They can be broken down in the same manner in which true witnesses can be broken down, but we have never seen an advocate who could apply such a cross-examination, as would break down a false witness, and not also break down a true witness.

is comparatively simple and accessible, whereas the difficulty of deciding on evidence is proportionately increased; the better classes avoid the courts, an atmosphere of perjury pervades them, and frequently the whole of the witnesses on both sides are totally untrustworthy. For such work as this, it is obvious that a capacity for weighing probabilities, good common sense and entire impartiality are requisite,—qualities which it must be admitted are to be found in the officers who preside over the local courts, taking them as a body, as much as in any other class of officers in the world. It is not, therefore, a matter of surprise that the native press do not regard the administration of justice as any great or prominent grievance, and this assertion might even be extended beyond the mere character and qualifications of the presiding officers, to the whole body of subordinate amlah, who are generally regarded as such monsters of iniquity. Certainly there are many persons who think that whatever defence may be offered for the Magistrates, the courts under them admit of no apology whatsoever; but again we must assert, that if the comparative silence of the native press is accepted as a criterion, they are not so unpopular as they are supposed to be. Sometimes, as in the *Englishman* in April last, we find an exposition of official villainy which appears to transcend all limits of endurance; it is shown, for instance, that it costs some 40 rupees in bribes to win a suit of 5 rupees, and that every amlah concerned profits by the transaction to the extent of from 8 annas to 2 rupees. As in most collectorates there are from 100 to 300 suits a month, many of which are for larger sums than 5 rupees, the amlah are evidently richer men than they are generally supposed to be.

We cannot forbear from protesting against such exaggeration. Granted that there are festering corners of iniquity to be found scattered over the country, which approach in some one or two details the picture which the writer in the *Englishman* has given as the common type of a Mofussil court; yet that it is a fair sample, or even that any one court produces at one and the same time all the descriptions of extortion therein stated, is a supposition which refutes itself by its own extravagance. If it cost a man 40 rupees to obtain and execute a decree for 5 rupees, especially when these costs are of a character which could not be recovered, we may be quite certain that the number of suits for 5 rupees would be very small; and that they are not so, is easily ascertainable. Moreover, there is a point beyond which roguery comes into collision with roguery, the interests of the mookhtears with the interests of the amlah. The mookhtears know perfectly what costs are necessary and

what are fraudulent, they also know that the higher the costs the greater is their loss in a twofold manner; for fewer suits will be brought if the expense of bringing them is increased, and when brought the more the client has to pay in other respects, the less liberal will he be towards the mookhtear. We are far from denying that in the courts of the Mofussil, and in many other courts as well, a suitor finds his path considerably smoothed if he has a certain number of spare coins at his disposal; old documents can be produced, copies can be made, with more or less speed according to the will of the amlah concerned, and it is not difficult to guess what is the motive power to influence his will, when it becomes important that the required operation should be performed with celerity. Such a fact we neither deny nor defend, all we can say is that it is more or less common to all places, and will be found out of India almost as frequently as in it; above all that it is not a very crying evil at the worst, especially in courts where the ordinary costs are lower than in almost any other courts in the world. After all, a suitor who, besides paying some 100 rupees in costs, pays some 40 or 50 more in unauthorised gratuities before obtaining a decree for 2,000 rupees, has no great reason to complain of his lot when he compares himself to his brethren in England or elsewhere, who are charged to the extent of some ten times the amount of the two combined for their privilege of suing and being sued for a similar sum.

Among minor grievances, the Police and the Post Office appear to enjoy the distinction of being most unanimously censured by the native press; it is very rarely that one finds a good word for either the one or the other. In the case of the former this might perhaps have been anticipated. The duties of the Police have a tendency to make them unpopular, and at the same time the necessary ill-success which must frequently attend the discharge of this duty, *viz.* the being absent when they are wanted, or the inability to detect anything when they do appear, naturally enhances this unpopularity. As far as we can judge, as a rule, the new Inspectors and Sub-Inspectors appear to be preferred to the old Darogahs, while the opposite is the case as regards the main body of the Police; the military training, dress and arming of the new force has had the effect of widening the breach between them and their fellow countrymen, and augmenting the dislike, not to say terror, with which they are regarded.

The Post Office occupies a more conspicuous place among native grievances than might have been anticipated. The difficulties and delays in obtaining delivery of ordinary letters by

persons who live in the interior appear to be almost intolerable ; even of letters on the public service, addressed to smaller schools and similar places, it will be found that from 5 to 10 per cent. never reach their destination, and a pre-paid private letter to a common person has, we suspect, a far greater chance of miscarrying than of arriving safely. We make this statement without any intention of finding fault with the Department ; the impossibility of adequate supervision in the interior fully accounts for the existence of the defects we have remarked upon.

Having now stated, as far as we can judge, what are not the grievances of the native press, or what, if grievances at all, are at most only minor grievances, it is time to turn to those subjects which do constitute a never-failing source of complaint. Little as such a question is noticed among the English papers, the first place must undoubtedly be given to the manner in which natives are employed and paid under Government. It must not of course be forgotten that this press represents but a fraction, though the most advanced fraction, of the people of Bengal, and that it by no means follows that even this fraction really feel, to any serious extent, the grievances which they deem it expedient to put forward. It should also be remembered that quasi-political grievances always do present a greater attraction to the press than those of a purely executive character ; but still, whether the depth of the discontent be little or great, the fact of its existence and prominence cannot be disputed, and the grounds on which it is put forward are in any case deserving of consideration on their own merits. Perhaps no article can be selected which expresses the general feeling on this point more definitely and clearly than one which appeared in the *Bigyaponee* in November last.* The subject of this article is the rule of Sir John Lawrence, from which it is hoped that two advantages may ensue ; what follows is thus related in the weekly abstract prepared under the orders of Government. The first advantage is that a precedent is thus created for the appointment of a civilian to that high office, and what is there to prevent a native of Bengal from eventually becoming Governor-General of India ? The second advantage is that His Excellency knows the causes of discontent in the minds of natives with respect to British rule, and may remove them. But as no signs of their removal have yet appeared, the editor thinks it expedient to enumerate the heads of grievances, which are as follows :—1st. The natives

* This paper was originally intended for the February number (84), hence the references are for the most part prior to that date.

are not allowed to share the privileges of the Europeans. *2nd.* They are subjected to a discipline different from that to which the English in India are subjected. *3rd.* The funds of the country are expended without any reference to the wishes of the people. *4th.* Though the natives are loyal, they do not enjoy the confidence of Government, and are not admitted into the army. *5th.* The Government are very partial to those of their own race. Some other minor grievances follow. In other words the grounds of complaint may be stated as (1) that the natives of India have no voice in the expenditure of the public money, (2) that they are not fairly treated in the disposal of patronage, (3) that they are not placed under one and the same administration of the law with Europeans.

Now, as we have above said, how far these grievances actually do press heavily on the bulk of the natives, or even on the educated natives of Bengal, is a matter with respect to which very different opinions might be entertained. There are many who might think that they are mere theoretical grievances, which are felt but little by the many, but which the few find it expedient to harp upon as the best means of increasing their own influence and importance, as it is frequently and at least plausibly asserted that in England the extension of the suffrage is little cared for by the lower classes, but that Mr. Bright and his party find it necessary to their own influence to represent it as an important question. On the contrary, there are others who probably with equal good reason might assert that the alleged grounds of complaint are truly felt as grievances by all those natives who give any thought to their political *status*. But whichever opinion be correct, there is no doubt that the *Biggyaponee* correctly represents the common feeling of the native press in the prominent place which it assigns to the grievances detailed above. On every possible occasion which offers itself, whether it be the new classification of educational officers, or Baboo Monmohun Ghose's letter about the Indian Civil Service, or Mr. Trevor's proposition to increase the salaries of subordinate civil Judges, no sooner is the subject broached, than the *Some Prakash*, the *Dacca Prakash*, the *Poornochundrodoy*, the *Biggyaponee* and others take it up as their text for the purpose of introducing their favourite subject. It is worthy of note too, that in the pamphlet recently published in England by Poorooshuttum Modeliar, the partiality for Europeans or the relative exclusion of natives with regard to public employment, in alleged opposition to the Queen's proclamation of equality, is associated with the Penal Code, the dethronement of native princes, and the extinction

of the native aristocracy as the four principal Indian grievances; and not only does this writer assign to this grievance so prominent a place, but the line adopted by the *Some Prakash* in commenting on this pamphlet, shows still more decisively in which direction the current is flowing at any rate in Bengal. The editor (in the number for September 25th, 1865) with regard to the dethronement of native princes, considers that it *was* a well-founded grievance, but that the policy of the Government is already changed on that point. As regards the extinction of a native aristocracy, he disagrees with the writer of the pamphlet altogether. As regards the Penal Code also, the editor considers that a few inexperienced Assistant Magistrates occasionally make it work oppressively, but he does not consider that any substantial grievance exists on this head. Not so however as regards the remaining grievance; while he tones down the other three, he considers that Poorooshuttum Modeliar has but inadequately stated the fourth. It is not only higher appointments which are given to Europeans, but the system of favouring them in the disposition of lower appointments also is being introduced; on this point he expressly states that Poorooshuttum Modeliar has expressed the national feeling. The Government from time to time acts contrary to Her Majesty's proclamation and its own promises. The natives of India no longer content themselves with the post of a Deputy Collector or a Small Cause Court Judge; they aspire to share in all situations connected with the judicial and executive department. And further on, the editor adds that the writer of the pamphlet ought not to have omitted to mention that it is a grievance that the natives are not practically allowed to enter the Civil Service—it is a grievance that they are not allowed to enter the army—it is a grievance that they have no voice in the expenditure of the taxes, and more especially that so large a sum is unjustly taken from India to support the army in England.

We feel confident then that we are justified in concluding that the partiality and preference shown for Europeans is *par excellence* the grievance which is put forward most prominently, and regarded as the most galling by the native press of Bengal. And with regard to it, it may naturally be asked; *1stly*, whether as a fact it exists; *2ndly*, whether if it exists, it is expedient to remove it in whole or in part; *3rdly*, and most important of all, whether there is any injustice in maintaining it, and whether, expedient or inexpedient, we are bound in duty to remove it.

As to the first point, we think it is impossible for any candid person to deny the existence of the preference. In subordinate

appointments which are by their character open to both Europeans and natives, the former have decidedly the lion's share, while of the higher appointments the Europeans enjoy almost the monopoly. In the recently formed grades in the Educational Department, not a single native, not even Baboo Bhoodeb Mookerjee the additional Inspector of schools, was included. The Civil Service is nominally open to all, and given away by free competition; but the examination is held in London, so that natives are practically all but excluded.* India is a part of the empire, and is garrisoned by a part of the imperial army, but the natives of India cannot enter that army whether as officers or doctors. At the top of the legal profession in India come the barristers, but no person can become a barrister in India; he must go to England or Ireland to be called, or must content himself with the inferior position of vakeel, and abandon all hope of being admitted to practise on the Original Side of the High Court, even though all the parties concerned in a case may be his own countrymen or relatives. In short, whether the natives take service under Government in the Police, the Department of Public Works, the Financial Department or elsewhere, they find that the higher appointments are reserved for Europeans, and the lower and less valuable left for natives.

Moreover not only are they unequal in the favour of Government, but they are also unequal in the administration of the law. A native steals or commits criminal breach of trust, he is tried on the spot, and, in most cases, not even before a jury. A British subject commits the same crime, and his offence must be overlooked, or else he must be prosecuted at great cost before a partial tribunal, for we conclude that it will be conceded to us that while an European and a native enjoy a tolerably equal chance of obtaining a favourable summing up from the Bench of the High Court, the chance of that summing up producing a corresponding impression on the Jury is anything but equal in the two cases.

Admitting then as we are constrained to do that the preference and partiality for Europeans are unquestionable facts, the next

* The native papers would go further and say that even when an energetic Hindoo does go to England to compete, rules are changed purposely to exclude him. This is decidedly the opinion of several papers. We need hardly say that it is unquestionably a mistake. Whether the alterations were justifiable or not, the Commissioners could not have had the remotest idea of damaging Baboo Monmohun Ghose's prospects when they made them. Moreover the writer of a letter to the *Englishman* in May or June last seems to show that the damage caused was imaginary.

question we have raised is whether it is expedient to maintain the distinction or not. This question we do not propose to answer on the present occasion; partly because it is a very large question, which cannot be properly answered in a limited space, and still more because it is not the question which the native press itself, as a rule, discusses. Moreover the question of expediency may in the long run be left to rectify itself. We may be quite certain that one of the objects of our administration is to strengthen itself, and, therefore, it can at the worst be only an error of judgment, which may be corrected at any time, if the natives do not enjoy as much official patronage and legal equality as is expedient.

We therefore pass on at once to the third and more important question, whether in maintaining the preference and partiality for Europeans, the Government of India is guilty of any injustice or political immorality. From the general tone of the native press, it appears as if in their eyes to state the case of preference as we have stated it above is sufficient, that no further proof of its injustice can be required. On the other hand, we often hear Englishmen lauding and extolling our impartiality and fairness, and speaking as if we were only too anxious to find educated natives in order to employ them, and apparently forgetful that at the very outset our broad and general policy, to say the least, requires explanation. The question then of justification for this policy ought not to be lightly passed over by any one who cares to reconcile theory with practice, or treat politics as anything more than a tissue of inconsistencies, incapable of being tested by logic or reduced to even the semblance of a system.

In dealing then with the question of impartiality or equality, it is most important to observe the distinction between equality in governing and equality in being governed. The native press, it will be seen, base their claims at least as much on our general promises of equality, as on ideas of abstract right. The important question, therefore, for consideration in either case, is—what is the extent to which we are bound by abstract right or by our general promises? To such a question the answer appears easy enough. Abstract right is in all cases a slippery ground to build upon, but the utmost extent to which we could be expected to admit it as an argument for equality, is that it binds us to concede equality in being governed. To admit that persons had an abstract right to govern themselves, would condemn not only our whole system of government in India, but every other government also which does not rest on universal suffrage.

In a similar manner, if our general promises of equality are appealed to, the question arises whether those promises imply the concession of equality in governing, or equality in being governed. Again, it is clear that they could only have implied the latter; equality in governing was altogether out of the question, and would have involved either the withdrawal of India altogether from the control of the English Parliament and Parliament-elected Ministers, or the introduction into that Parliament of an enormous number of members for India, proportioned to the size and importance of that country; both of which were obviously never contemplated for a moment.

We are therefore in possession of a simple and at the same time, obvious criterion to apply to the claims of the native press, *viz.* does this complaint of inequality relate to something connected with governing or being governed? If the latter, we maintain that some very good grounds ought to be adduceable to justify the retention of the inequality, if indeed any grounds can be held to be sufficient; if the former, then the inference is easy that what is demanded is not equality as subjects, but something which, when followed to its legitimate consequences, requires us to take to our ships and be off, unless the voice of the people of India speaking by universal suffrage requests us to remain.

Adopting then this canon of criticism, let us first turn to the charge of inequality in the administration of the law; are we not compelled to admit that the privilege which British subjects enjoy of being tried before the High Court and a Calcutta jury, is a manifest breach of this equality? It has indeed been defended, and that by no less a person than the present legal member of Council, on the ground that it is only a case of exceptional legislation, and is on a par with that which secures their own law to a Hindoo or Mussulman defendant in a civil suit relating to inheritance or contract. But so weak a defence by so able a defender is perhaps the strongest of all proof that the position is untenable. The one is a case of civil, the other of criminal law,—civil law which is by its nature private, while criminal law is public, the former being for the benefit of individuals, the latter for that of the community. Hindoo civil law being for the benefit of Hindoos, it would be indeed preposterous to introduce any alterations which would be other than beneficial, and if their own law on certain matters is better suited to them than ours, it becomes not a privilege but a mere abstaining from wanton hardship, not to deprive them of the benefit of it. But criminal law being for the protection of the community, exceptional legislation

in this respect is giving to a class a privilege as against the remainder of their fellow-subjects. Moreover, the failure of analogy between the two cases, as adduced by Mr. Maine, does not end here; even admitting that the different circumstances of different nationalities might justify a variance in the criminal laws laid down for them, though being in one and the same place and subjects of one and the same Government, still in the grievance under consideration, it is not the substantive law but the procedure and the tribunal which are different. For this it is impossible to assign any other reason than that the tribunal and procedure which are good enough for one class, are not good enough for the other; the very worst and most humiliating excuse which could be admitted. A, a Hindoo, is accused of killing B; the local tribunals and Criminal Procedure Code are good enough for him, and he is tried on the spot. But let A be a British subject, and the case is changed; the local courts are no longer competent to judge of the case against him; a vast amount of public money must be spent in conveying him and the witnesses to a distant place before justice can be done.

But unless we are mistaken, the Hindoo grievance does not terminate here. Were it only that a more learned and more highly-paid Judge and a more scientific bar are appointed to try the British subject, scarcely half the present dislike would be felt to this exceptional legislation; but the most objectionable element still remains. The British subject must be tried not by an impartial and experienced Judge, but by a Jury often strongly imbued with class prejudices. Scarcely a sessions occurs without one or more such prisoners, who ought to be convicted and for whose conviction the Judge had charged, being acquitted; and such an event scarcely ever fails to excite the comments of the native papers. Not long ago, a single jurymen by persistently standing out, prevented the acquittal of a prisoner who was convicted by the succeeding jury almost immediately. On the other hand, it cannot be denied that Mofussil juries not unfrequently retaliate in cases in which they have to try a complaint made by an European. In such trials it is often even more impossible to obtain a conviction, than it is when a Calcutta common jury have to try one of their countrymen. The consequence seems to follow that in a country such as this, it would be better to leave questions of fact in criminal as in civil matters to be decided by the Judge, at least in all cases in which race or class prejudices are aroused, or if the introduction of laymen is deemed desirable, it should be as assessors only, and not as final and irresponsible arbiters.

In these remarks it is far from our intention to decide that the immediate introduction of a Black Act, as such legislation has been termed, is, regarded independently of our professions of equal legislation, expedient; we own that on the whole we incline to the opinion that no harm would result from it, and we cannot but think that the Government are paving the way to this end by safe and gradual steps. We are the more wedded to this view from a sense of the humiliating criticism, which the present state of things subjects us to. Still we cannot pretend to deny that it is by no means an easy or simple matter, and that many grave and weighty reasons might be alleged against equalising the law. But if we cannot carry out our professions, we should never have made them; we surely intended to promise equality in being governed, and as long as the dominant race is under one law and procedure, and the subject race under another, it is useless to pretend that that promise is fulfilled.

If an explanation be sought to account for this diversity between theory and practice, it should probably be found in the fact, that the English nation have the chief voice in laying down the theory of our Government, whereas the local Government, the press, and the independent Europeans have the greater influence in determining its practice. Now it would be difficult to find any country less qualified to lay down theories for the government of another than England. Only the other day Mr. J. S. Mill pointed out with great effect in Parliament, that it was in England that the position of landlord and tenant was exceptional, and that England was endeavouring to regard an exceptional state of things which suited her, as the rule which ought to be applied to all other countries. The same is true of many other things besides tenant-right, and of none more than of the antagonism between races and classes. In England all races are so fused together, such a good feeling exists between the different classes of society as regards the application of the law, and the law itself is so congenial to the national taste, that no checks either exist or are required to prevent the law from being turned into a handle for one class to use for the purpose of oppressing the other, or to secure one class against the prejudices of another. Hence a jury, composed of the lower middle-class, tries all persons and all classes of graver crimes, without complaints or scandals or serious abuses. This system is then made in theory the model on which justice should be administered in India,—a country where a great part of the law is at variance with the national feeling, where violent race antagonisms exist between natives and Europeans, where strong

class rivalries are formed between the official element on the one hand, and the English bar, the independent Europeans, the greater part of the English press, and not unfrequently some of the Judges (*e. g.* Sir Mordaunt Wells) on the other; while the character of evidence is such that the very axioms upon which the English system is based become more or less untrue in India.

In such a state of things, the opposition against the equalisation of the law forms part of a general system of protest against the abstract theories which impose on this country an income-tax, a military police, irresponsible juries, and other equally unsuitable institutions; only in the instance in point the protest is directed against the most defensible of all English theories, one which it is difficult to contravene without a blush; *viz.* that in a state of peace and tranquillity all subjects of the Government should enjoy the protection of the law without favour or inequality.

We now come to the second point of inequality as regards employment under Government, and adopting the criterion above laid down, the question to be examined is, whether the claim to be employed indifferently with Europeans is in its nature a claim to equality in something connected with governing or a claim to equality in being governed? For this purpose let it be considered what is in the last resort the governing body and what the governed in India? India is governed nominally by the Queen, virtually by the English ministry for the time being. The ministry are dependent on the will of Parliament, and Parliament is composed partly of hereditary peers, partly of members elected by the £50 tenants and £10 householders of the United Kingdom. So that in the ultimate resort, the governing body consists of the Queen, the peers, and the voters at elections for members of the House of Commons, while all the people in India, Europeans included, fall within the limits of the governed; and it is obvious that the line of demarcation between these bodies cannot be altered, except by an appeal to force, or by the voluntary admission of others into their pale by the governing body.

In the next place, it needs no proof to show that all governors, more especially a governing body such as that of India, exercise their power mainly by subordinate agents whom they select and to whom they delegate part of it, and that, if they were not allowed to choose their own agents, or if their choice was in any material degree fettered, they would lose an essential and important portion of their authority. Thus, the suffrage-holders in England exercise their power only in choosing

members for the lower house. Take away their right of choice and their power is altogether gone. Again, the House of Parliament practically choose the ministry; deprive them of their right, and their power would be greatly curtailed. In a similar manner, if the ministry had no right to choose the Governor-General and other Governors of provinces, and if these Governors could not choose their own subordinates, their respective powers would be greatly diminished.

In short, the actual governing power is exercised, partly by the Parliament, partly by the ministry of the day and especially by the Secretary for India, partly by the Governor-General, partly by the Governors of provinces, partly by the various Councils and Legislative Councils, partly by Commissioners of Divisions and partly by other subordinate agents; while the governing body scarcely exercises any direct power at all, and is the governor only because it chooses those to whom its power shall be entrusted. Nor is it a mere fragment of power which thus passes into the hands of the subordinate agents; for instance, who will deny that a district will be better off which has a good Collector-Magistrate under an indifferent Commissioner, indifferent Governor and indifferent Secretary of State, than a district which, during the incumbency of an able Secretary of State, able Governor, and able Commissioner, is placed under a bad Collector-Magistrate?

It seems then to be a reasonable conclusion that it is an essential prerogative of a governing authority to be unfettered in the choice of its agents, or rather to have no other fetters than those which it chooses to impose on itself for its own convenience; and hence that there can be no such thing as a *claim* to be employed as an agent of Government on the part of one who is governed, except in so far as that claim arises from past services, expressed or implied contracts, and other engagements of a similar character.

Such a claim where it exists becomes *ipso facto* a claim to a participation, however small, in the Government itself. Let us take as an illustration of this one of the very subjects of complaint on the part of the native papers, *viz.* that the examination of the Civil Service is held in London. It is not an inapt instance, because of all the subordinate servants or agents of Government, there are none which from the nature of their duties exercise a larger share of power than the Civil Service. Therefore if any person, not himself a servant or member of the governing body, were to have a right to appoint to the Civil Service, he would have some share in the Government itself through his nominees. The governing

body would, it is true, be able in the last resort to pass what laws and orders it desired, but laws and orders vary so much according to the manner and spirit in which they are executed, that the nominator of the Civil Service would practically be able to affect these laws and orders very materially. Now the governing body having this plenitude of power as regards the selection of its civil servants, does not by throwing them open to competition intend thereby to abdicate any part of its prerogative. It is under no obligation, except the moral one of choosing those who will best carry out the measures which it deems good for the country; it might have selected all its civil servants from one city, or from one street of one city, if it thought this the best method of securing efficiency. When therefore it throws these appointments open to general competition in London, it does so, not because there is anything sacred in competition, not because all classes have an *a priori* right to compete, but because it considers that on the whole this method secures a better class of servants than would have been obtained by entrusting the Secretary of State or one or more of its other agents with their selection. Therefore, in fixing the seat of examination in London, no injustice has been inflicted on those persons, such as the inhabitants of India, who have difficulty in coming there; for those persons having no antecedent right to serve might have been without injustice excluded altogether, and therefore *a fortiori* there has been no injustice in practically excluding them. The Government no doubt considered that in the present state of the empire its laws and orders would be more efficiently carried out by a European Civil Service, and they came to the conclusion that, competition not being a bad method of selection, a competition held in London would practically secure such a service intermixed here and there with a native of India, whose compulsory attendance in England would have rendered him qualified for the work for which he was wanted.

We think then that when the claims of the native press on the subject of employment under Government are analysed, it will be found that, however natural and plausible they may be, and however *expedient* it may be to give them due weight, they in fact amount to a claim to share in the work of Government,—a claim therefore which, if the governing body has any right to govern at all, it has a right to refuse without injustice or partiality.

It should not, it is true, be overlooked, that these claims or complaints of partiality serve a perfectly legitimate purpose in so far as they bring to the notice of the supreme governing

body or its superior agents the action of the subordinate agents. Thus, if a subordinate agent in India, as for instance the Director of Public Instruction, employs native agency to a less extent than the Secretary of State desires that it should be employed, the native press by acquainting that functionary with the fact is performing a part to which no possible objection, on the ground of principle, could be taken. But the objections of the native press go further than this. Stated in definite terms, their meaning is that it is an injustice, not only on the part of subordinate agents, but on the part of the Government as a whole, to prefer Europeans to natives on the ground of their race only; that in all cases in which their general intelligence and practical knowledge of the work required are equal, and the only difference is that one has the national characteristics of an European, and the other of a native, the latter ought to be as eligible as the former. We reply that such a principle, whether wrong or right, does not stop here; it strikes at the root of our government altogether. If some fifteen hundred thousand electors in England have a right to govern India, they have surely a right to entrust their power to agents of their own race, as far as they desire it, even though those agents are in other respects not more competent than persons of the subject race.

Let us then recapitulate briefly the view we take of the claims to equality and the complaints of our partiality, which are so constantly put forward by the native press. We urge that as far as this inequality or partiality bears on their position as subjects, it is justly open to censure, but that as far as it bears on their scanty employment in posts of authority, it is a necessary and legitimate consequence of our position in India, and in fact of the position of any government in any country, which is not elected by universal suffrage. We are also keeping clear, designedly, of the question of expediency; we are not arguing that the Government are following in every way the wisest course; we are not even admitting that they do in every kind of employment prefer Europeans to natives. On the contrary, many things show that there is a great tendency to encourage natives to prepare themselves for important and responsible situations under Government. There is a native Judge of the High Court, and Calcutta Small Cause Court; native members of the various Legislative Councils, and a native in the Civil Service. At the same time, efforts are being made to interest the natives more and more in the work of self-government by municipalities and committees, and to bestow on them a greater degree of independence and government. It must always be characteristic of

a wise, as well as of a generous, policy to make our rule, as much as possible, one of love and interest, and, as little as possible, one of fear; and one of the best, if not the very best, test of this is the extent to which we can avail ourselves of the services of the governed in the work of government. But this question of propriety and expediency must not be confused with that of justice and impartiality, for impartiality and justice only require that those servants should be engaged, on whom the employer conscientiously thinks that he can best rely to carry out his measures in their integrity, and to consolidate his influence and authority.

We cannot, however, forbear deviating from our rule of leaving the question of expediency undiscussed, in order to say a few words on the subject of the alleged grievance that there is no opening whatsoever for a military career to the upper classes of Hindustan. Such a deviation is perhaps the more excusable, because the reference to this subject in the native press of *Bengal* shows unquestionably that it is really felt as a hardship. That this press, the mouth piece of employes, should plead for an increase of employment is natural enough, but when the knights of the pen plead for an opening for their brethren of the sword, from which there is not much likelihood of their deriving any personal benefit, we feel that they prefer a claim which on the face of it is entitled to consideration. It cannot be controverted that some among the old aristocracy even in Bengal, and many more in the North-West and other parts of India, have a natural taste for a military career,—a taste in many respects deserving of encouragement,—and the suppression of which is perhaps the cause of no little of the indolence, vice, and effeminacy which are fast sapping the best blood in Hindustan. Certainly, the past history of the country shows us that the military genius of the general, and the martial courage and skill of the subordinate, are not alien to the Hindu or Mussulman. Our own immediate experience shows that even as common soldiers there are many tribes in India which hardly yield the palm to the best soldiers of Europe. Surely these qualities ought not to be wasted. Of course the proposal to open the military profession to native gentlemen is beset with difficulties, and it would probably be urged that regiments under native officers would be a source of weakness rather than of strength, but such objections ought hardly to be regarded as insuperable. India is not more homogeneous than the Austrian Empire, and Austria finds it practicable to hold Italy by the help of Hungarians, and Hungary by the help of Tyrolese. It would seem that a score of regiments, officered principally by natives and employed half in the different presidencies of India,

half in China, Ceylon, and other tropical stations, would probably be found of great use in supplementing the establishments of European troops in those very places in which they suffer most from sickness and the climate. In any event, whatever the difficulties of such a scheme may be, it must be regarded as a flaw in our administration of India, as long as that profession which, by the old tradition of the country, is regarded as the most honourable of all, is practically closed to all native gentlemen; as long as we drive them to the conclusion that, if they wish to be warriors, they must also be rebels.

Closely allied to the discontent at the disposal of patronage, which holds so prominent a place in the columns of the native press, is the similar discontent at their prospects which appears to be daily increasing among that class of persons who have been trained under our new educational system. A very superficial acquaintance with the native press is sufficient to satisfy any one, that there is a growing feeling of disappointment and dissatisfaction among the ex-students of the various schools and colleges which have been established all over the country during the last ten years. Nor is it difficult to discover the source of this discontent. The Government has been stimulating by a large bounty the supply of an article for which an inadequate demand existed, and the inadequacy of the demand is just beginning to be felt. The demand for educated persons consists of the employment which the courts of justice, the learned professions, offices of every description, public and private, and teacherships at the various educational establishments afford; the supply consists of all the educated young men who form the annual out-turn of the schools and colleges of Bengal. It is clear that the educational system* would be working satisfactorily when there was a state of equilibrium between the supply and demand; it would be unsatisfactory were the supply to be greatly in excess of the demand, and were that supply to be stimulated by a large public bounty, it is evident that public money would be spent not only uselessly, but even detrimentally. In every civilized country, there is always a tendency to a swamping of the learned professions, and to an over-supply of educated labour. Moreover the general characteristic of the profits of educated labour is, that they are larger but are longer deferred, and require a greater outlay of capital before they can be realised. Now suppose in any country mental and educated

* Of course, we are here speaking of a higher class of education, not of that elementary education which it is desirable to extend to all classes of the community, whether they live by manual labour or not.

labour to be just as popular and no more so than physical and uneducated labour, it is evident that the relation between the profits of the two would be almost equal. If the profits of educated employment were greater than those of uneducated, they would be so to such a degree as to balance the greater outlay spent in preparation; but in most civilized communities mental and educated labour is more popular and more highly esteemed than uneducated labour. The consequence is that the greater esteem and popularity of the employment becomes part of the return for the outlay, and therefore the pecuniary return alone is less in proportion for educated than for uneducated labour. But in a country like India, how would these principles work when left to take their natural course? The love of sedentary occupation is so great, and the dislike of manual labour so universal, that it is easy to see that even were things left to themselves, the mental and sedentary occupations would be thronged, and their profits proportionately diminished, while manual labour of all kinds would be so depreciated that relatively large pecuniary emoluments would fall to the lot of those who betook themselves to them. If in England a curate who has spent a couple of thousand pounds on his education, receives about the same remuneration as a skilled artizan who has supported himself ever since he was fifteen years old, because the profession of the former is so much more esteemed and coveted than that of the latter; is it not certain that in India the operation of the same causes would soon enable a cooly to earn more than a mohurrir? Hitherto caste has tended to keep off this result by confining knowledge to a small portion of the community only, but now the ties of caste are being broken through, and at the same time a number of causes are conspiring together to aggravate the inequality. A new educational system has been lately introduced, which having been accepted by the country but gradually, has for a time limited to a great extent the supply. At the same time, the very introduction and expansion of this system has itself created an abnormal demand in the number of new appointments which have been created, and which, after having been once filled up, will for the future yield but a moderate percentage of vacancies. Consequently at the first start everything was favourable to the student, the competitors were few, the vacancies many, the expense of education in great part borne by the public. Numbers of men after hurrying through their educational course, succeeded at once to appointments, the income of which in a single year exceeded the entire sum they had expended on their tuition. No wonder

that in such a case an English education was looked on in the light of a gold mine, as an investment where the dividends were large and sure compared to the paid-up capital. Now, however, these prospects are greatly changed for the worse, and promise to go on deteriorating. Where there were formerly 50 English schools there are now 500, and where 250 before annually presented themselves for the University Entrance Examination, now 1,500 appear. On the other hand, while the supply has been more than quadrupled, the demand has greatly fallen; comparatively few new appointments are created, even the vacancies which occur are below the proper average, owing to the newly created posts having been filled by such young men at first starting. The profession of the law is already overstocked, those of medicine and civil engineering are being rapidly filled. It must be evident that the effect of the present system is to lead to a rapid deterioration in the prospects of educated persons owing to the supply being in excess of the demand, and this, we believe, is one of the reasons why the monopoly of so many government appointments by Europeans is looked on with such disfavour by the native press, though it must be evident that if every such appointment were thrown freely open, it would diminish the pressure but very little, and in a year or two the block would be as great as ever, and the discontent of the majority unalleviated.

It does, however, appear to be worthy of serious consideration, whether we are justified in aggravating the evil as we are now doing by paying so large a portion of the expenses of education from the public funds. It may have been and may still be a wise policy to create a class educated on the new system, but it appears very questionable whether a government subsidy is any longer justifiable, when the movement is thoroughly set on foot, and able to depend on its own resources. It is palpable that the effects of this subsidy is to lighten the expenses of education, and thereby enable a greater number of persons to avail themselves of it; this increase of numbers then operates to increase the supply, and thereby diminish the remuneration which educated men can command. It is true that to promote education is a most legitimate object for the expenditure of public money, but education is of two kinds, that of the farm labourer or mechanic, which will perhaps make him a better citizen, but will never bring him any tangible pecuniary return, and that of the lawyer or clergymen which forms his stock in trade for his future profession; it is obviously the former and not the latter class which is the proper recipient of government aid, the boy of the national school who is losing 3 shillings a

week by staying there after he is 12 years old, not the Etonian or Harrovian who, if he be not a man of independent means, intends afterwards to reimburse himself by entering into some learned profession.

Now, in India, this system is entirely reversed, not indeed by the fault of Government, but by the circumstances of the country. Of students who intend after learning to read and write to turn themselves to manual labour, there are perhaps none; those who learn with a view to making their learning pay, are 99 per cent. It may then be asked, is Government on this account to withdraw altogether from education, and make no efforts to introduce a system of elementary instruction among the working classes? Such a course would perhaps be hardly desirable, but it is perfectly clear that paying five-sixths of the expenditure of large colleges from the public funds does not have much effect in promoting elementary education among the lower classes, whereas it does contribute very much to encourage persons to become Masters of Arts at a tithe of the real cost which such an education involves, and then to consider that the Government is bound to provide them with lucrative employment, because it has already paid the greater part of the expenses of their tuition. Some steps should be taken to pay a great part of the expenses of an elementary education, withdrawing that support at the higher stages, at which it is obvious that the student is looking to his studies as the source of his future support; at present, on the contrary, we believe we are correct in asserting that the Government colleges are the least self-supporting of all the educational institutions of the country.

It may have been a real benefit to this country to stimulate in it a taste for European learning, as well as a wise policy to raise up a class whose interests and sympathies would be totally distinct from, and, in a certain sense, contrary to those of our old enemies in India, especially of the Mahommedans; and for this purpose the system of holding out high prizes to educated men, and of defraying from the public purse a very large proportion of the expenditure required to obtain those prizes may have been fully justifiable; but the taste being once infused, the Government should be careful not to continue their stimulating process too long or to carry it too far. The interests and sympathies of the newly-educated class, though different from those of many of their own countrymen, are certainly very far from identical with ours, as a perusal of the native papers is sufficient to shew; and if we force education to such an extent as to glut the market with the class of Entrance Certificate holders, and consequently bring ruin on their hopes and pros-

pects, we certainly shall not increase their already lukewarm attachment towards our rule.

We must now bring our comments on the native press to a conclusion; we have not, of course, endeavoured to exhaust such a subject, for this would have been impossible in a limited space; all we have attempted is to draw attention to some of the leading questions which are raised by the native papers; and, above all, to the very great prominence which they give to the subjects of European partiality and the want of prospects for educated natives.

- ART. V.—1. *The Indian Penal Code. (Acts XLV of 1860 and VI of 1861 of the Legislative Council of India.)*
2. *The Criminal Procedure Code. (Acts XXV of 1861, XXXIII of 1861, and VIII of 1866, of the Legislative Council of India.)*
3. *The High Courts' Criminal Procedure Amendment Act. (Act XXIII of 1865 of the Legislative Council of India.)*
4. *Act XVII of 1862 of the Legislative Council of India.*
5. *The Indian Evidence Act. (Act II of 1855 of the Legislative Council of India.)*
6. *The Weekly Reporter. Appellate High Court (Calcutta). Vols. I to V. Criminal Rulings.*
7. *Act V of 1861 of the Legislative Council of India, being an Act for the Regulation of Police.*
8. *Archbold's Pleading and Evidence in Criminal Cases (Fifteenth edition, London, 1862.),*
9. *Roscoe's Digest of the Law of Evidence in Criminal Cases. (Sixth edition, London, 1862.)*
10. *A general view of the Criminal Law of England, by James Fitzjames Stephen, M. A. of the Inner Temple, Barrister-at-Law, Recorder of Newark-on-Trent. (London, 1862.)*
11. *Broom's Commentaries on the Common Law. Book IV. (Third edition, London, 1864.)*
12. *Russell on Crimes. (Fourth edition.)*
13. *Greaves' Criminal Acts. (Second edition, London, 1862.)*
14. *Blackstone's Commentaries.*
15. *Sir M. Foster's Discourse on Homicide.*
16. *Hawkins' Pleas of the Crown.*
17. *Alison's Criminal Law of Scotland.*
18. *Theory of Legislation, by Jeremy Bentham, translated from the French of Etienne Dumont by R. Hildreth. London, 1864.*
19. *Butler's Sermons VIII & IX.*

„THE extreme importance of a knowledge of our criminal law will be admitted,” says Mr. Broom, “by him, who reflects, however cursorily, on the well-known maxim—*Ignorantia juris quod quisque scire tenetur neminem excusat*,—a mistake in

“point of law which every person of discretion not only may, but is bound and presumed to know, affords in criminal cases no sort of defence.”* And Mr. Justice Forster in the preface to his Reports, dated the 27th February 1762, impresses on *all persons* the importance of this knowledge in the following weighty language. “The learning touching this subject is a matter of great and universal concernment. It merits, for reasons too obvious to be enlarged on, the attention of every man living. For no rank, no elevation in life, and let me add no conduct how circumspect soever, ought to tempt a reasonable man to conclude that these enquiries do not, nor possibly can concern *him*. A moment’s cool reflection on the utter instability of human affairs, and the numberless unforeseen events which a day may bring forth, will be sufficient to guard any man conscious of his own infirmities against a delusion of this kind. Those, therefore, whose birth or fortune have happily placed them above the study of the law as a profession, will not be offended if I presume that discourses on these subjects in preference to every other branch of the law demand their attention.” With such high authority for regarding criminal law as a branch of *popular* knowledge in Great Britain, we think we need offer no apology for a popular discussion of the subject here in India, where so large a proportion of the European population are directly concerned in its administration. To those who occupy no official position connected with the Bar, the Bench or the Magistracy, it may however be important and must certainly be interesting to know in what respect the Indian system of criminal law, to which their residence in this country renders them subject, differs from that system which obtains in Great Britain and which Englishmen abroad are wont to regard as perfection, though Englishmen at home, as is their wont, grumble against it as against most things in the constitution. There is a very prevalent opinion that what is ancient is good, and that the excellence of the English system depends, in no slight degree, upon its antiquity. Like most popular notions this is a very erroneous one, for English criminal law consists, to a great extent, of statutes not fifty years old, and no inconsiderable portion of it is of recent date, being contemporary with or subsequent to the Indian Penal Code and Code of Criminal Procedure, which embody

* Similarly the Penal Code, Section 76,—“Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it,” or (Section 79) “justified by law in doing it.” Mistake of fact may excuse, but mistake of law will not.

the latest improvements made up to the period of their compilation in this branch of jurisprudence at home. The codification of the law, more especially of the criminal law, is a subject which has occupied considerable attention in England of late years, and the successful realization of the idea has formed and still forms the dream of many an eminent jurist. But while the idea has been realized for India, the greatest development it has reached at home may be seen in the six Consolidation Acts of 1861, which embrace but a portion of the whole subject; and the execution of which part of it wants many of the necessary and distinguishing features of a "Code."

Criminal law deals with *crimes*. "A crime," says Mr. Broom, "consists in some act or combination of acts involving a violation of some right or an attempt to violate some right, aggravated by the use of force and violence tending to a breach of the peace, or by the existence in the mind of the criminal of a fraudulent or malicious intention." Mr. Justice Blackstone defines a crime thus,—“A crime or misdemeanour is an act committed or omitted in violation of a public law either forbidding or commanding it.” The definition of a "crime" given by the Revised Statutes of New York is "*any offence for which any criminal punishment may by law be inflicted.*" Mr. Stephen, doubtless following these authorities, defines a crime as 'an act of disobedience to a law, forbidden under pain of punishment'.

Similarly, Bentham thus defines the synonymous term "*offence.*" "Offences are whatever the legislator has prohibited whether for good or bad reasons." If the provinces of law and morals were identical, transgressions of the law and of morality would be punished by the same code. But as we shall see in the course of this article, many acts which are not in themselves immoral, are transgressions of the criminal law, subjecting the doers thereof to punishment, while on the other hand the same criminal law will not interfere with other acts, which are the greatest violations of the code of morality.

The definition of an "offence" in the Penal Code is as follows:—"The word '*offence*' denotes a thing made punishable by this code." This of course is restricted to the use of the word in the Penal Code. If no other act than what is punishable under the Penal Code were to be regarded as an offence or crime in this country, the Penal Code would comprise the whole of Indian Criminal Law. But such is not the case, for Section 5 expressly reserves all *special* and *local* laws, which as subsequently defined are laws applicable to a particular subject or to a particular place only of British India. The laws relating to salt, opium, and the abkaree revenue are special laws

while the Calcutta Municipal Act would be a local law. The word "offence" as used in the Indian Penal Code does not include acts made punishable under these particular laws, though such acts are certainly *offences* against these supplementary portions of the criminal law of the country, inasmuch as they are forbidden under pain of punishment; accordingly the Commissioners remark as follows in their second report. "We do not advise the general repeal of the penal laws now existing in the territories for which we have recommended the enactment of the code * It appears to us that actions, which have been made penal on special temporary grounds, ought not to be included in a general Penal Code, intended to take its place among the permanent institutions of the country." We may here remark that the Indian Penal Code covers the whole or nearly the whole of the ground common to morality and criminal law, though it goes also considerably beyond those bounds. The offences created by special or local laws owe their existence more to utility than to morality.

One of the most remarkable features of distinction between Indian and English criminal law, as at present existing, is the *absence of all definitions of crimes* in the latter.* "It might possibly be imagined," says Mr. Broom, "by one not conversant with criminal law, that some precise definitions could readily be given or some test be applied, whereby the more serious, *i. e.* indictable offences might be at once marked out and distinguished alike from minor infringements of the law and from actionable wrongs. It might, perhaps, be inferred, regard being had to the admitted importance of disseminating amongst the public a correct knowledge of criminal laws, that the means of acquiring without much difficulty such a knowledge would be placed within reach of all. But these reasonable expectations would certainly not under our existing system of criminal jurisprudence be realised. Not merely between specific offences, but between the leading classes and divisions thereof, the boundaries and limits are in our law but too often purely technical and artificial." It is to this absence of definitions, to this want of boundaries and limits and abutments (if we may so say), that much of the intricacy and objectionable technicality of English criminal law has been justly ascribed. In the whole of the English criminal statutes, there is hardly a single instance of a common law definition, or the statement in precise words

* Treason, we believe, forms the only exception. This, as we shall see hereafter, is defined, though not completely, as the statute does not lay down what acts amount to "levying war."

of any principle. It was left entirely to the Judges to say what constituted this or that offence, and all the statute law did, was to fix the punishment. In the early days of our constitution there can be little doubt that such a system as this was fraught with danger,* and it was well for the administration of justice in England, that our Judges after a long but successful struggle were removed from temptation by being allowed to hold their appointments not at the will of the Crown, but '*quamdiu se bene gesserint*.' "It is remarkable," says Lord Campbell,† "how few instances of poisoning or assassination occur in the history of England compared with that of France and of the States of Italy. The reason may be, that with us Parliament was a more ready and convenient instrument of vengeance than the bowl or the dagger, and the object of the ruling party could always be attained *under the forms of law*." Lord Campbell here speaks with special reference to attainder and the judicial powers of Parliament; but the trial of Sir Thomas More and others will shew how the same object could be attained under the forms of law in the court of King's Bench and elsewhere. Had the absence of definitions of offences and the *then* uncertainty of portions of the common law nothing to say to facilitating the perpetration of what have been so expressively termed judicial murders? At a later period when the Judges were made responsible to public opinion alone, they proceeded to settle the criminal law by a series of decisions, which as far as possible aimed at uniformity. At the present time the discretion of the Judges exists in name only, as far as the present subject is concerned, for the criminal law of England has become defined by a series of precedents on each particular branch. From these precedents, this case-law or Judge-made law, as it has been denominated, the definitions can indeed be gathered, but only by lawyers, so that the public

* On the occasion of the famous dispute between Lord Ellesmere and Lord Coke as to whether the Court of Chancery could by perpetual injunction stay the judgment of a Court of Law, many of the Puisne Judges had taken part with Lord Coke, who was at the time too useful to be dismissed. But with respect to the Judges, Bacon gave the king (James I) the following advice: "To be plain with your Majesty, I do not think there is anything a greater *polychreston* or *ad multa utile* to your affairs, than upon a just and fit occasion to make some example against the presumption of a Judge in causes that concern your Majesty, whereby the whole body of those Magistrates may be contained the better in awe." He recommended that the Judges should answer it *on their knees* before His Majesty. Soon after the twelve did assume this posture. (See Campbell's *Lives of the Chancellors*, Vol II, pages 336 & 370.)

† *Lives of the Chancellors*, II, 245.

in general can have no competent knowledge of that which every one is bound to know. The law being settled, the task of framing definitions for each offence might seem comparatively easy. In fact those to whom we are indebted for the Indian Penal Code had their task in this respect considerably lightened by being able to refer to those very precedents, cases and decisions, in which English criminal law is embodied. Mr. Stephen remarks that definitions of crimes are made possible by the general uniformity of human actions. Possible, no doubt, but still the task must be a nice and a difficult one. The framers of the Penal Code derived material assistance from the employment of illustrations, which are most useful in those cases in which language, chosen ever so carefully, seems yet scarce to embody all that is required. The definitions of offences contained in the Penal Code, supplemented by those illustrations, would seem, after an experience of nearly five years, to have realized the expectation entertained by the Law Commissioners, and to have obviated those doubts which were honestly entertained by some.

Connected with the point we have just noticed, there is a remark which may here be opportunely made. The present system of criminal law in England has been the work of centuries, and of many minds. The rapid progress of the nation, and the great increase of wealth within the last two hundred years, called for many additions to and extensions of those early principles, which, simple enough in themselves, lie at the root of our common law. Statutes were thus passed hastily, to provide against specific offences, and Judges amplifying their jurisdiction, endeavoured to make old principles meet new cases. The structure was built up more with regard to existing wants and emergencies, than with a view to complete uniformity and symmetry; and may not inaptly be compared to some old building of the Elizabethan era, which has, from time to time, been altered and enlarged, and added to in various styles of architecture to meet the requirements of modern convenience or modern taste. The Indian edifice, on the other hand, has been erected at once on a standard plan, which however owes all to the experiences of those who at various periods up to the present day put their hands to the construction of the grand old building at home. Not among the least of the benefits derived by India from England is that body of criminal law, the compilation of which has cost us so many years, and so many great minds, and so many struggles, and not a little blood-shed.

Another point of distinction between the two systems under notice is the absence of the division of offences in India into

felonies and *misdemeanours*. Treason, we may remark, was a separate offence not included under either of the above heads. The term "*Felony*" is according to Spelman derived from *fee*, a fief, and *lon*, price or value: it signified in former times the forfeiture of the tenant's land to the lord of the fee, which was a necessary consequence of the dissolution by certain acts of that compact between the two parties which formed the essence of the feudal system. It hence came to stand for the acts which entailed these consequences, and when the feudal law was introduced into England, those crimes which induced forfeiture of lands and goods were called felonies. Blackstone's definition of a felony is "an offence which occasions a total forfeiture of either lands or goods or both at the common law; and to which capital or other punishment may be superadded according to the degree of guilt." At the present day, a conviction for felony carries with it *ipso facto* a forfeiture of the property of the felon. A "*misdemeanour*" is any offence which is neither a treason nor a felony. The distinction between felonies and misdemeanours is now admitted on all hands to be arbitrary and useless. Mr. Stephen remarks that it comes very near to the ancient and nearly universal distinction between crimes and delicts or torts, *i. e.* wrongs done to the public and wrongs done to private individuals, which latter, as shown by Mr. Maine in his work on Ancient Law, alone formed the subject of the penal law of ancient communities. For this class of offences the remedy under Roman Law was by a civil action, and Mr. Stephen shows by the different form of the juror's oath on a trial for felony and that for misdemeanour, that the idea is still kept up. In fact the question—What is a misdemeanour at common law? hardly admits, says he, of any better answer than that it is a tort prosecuted by the Crown. The law of misdemeanour shows still more than the law of treason and felony, how dangerous might have become the practice of leaving it to the courts to say what acts constituted an offence. The court of King's Bench claimed at one time a power of calling any act a misdemeanour, if in the opinion of this tribunal as "*custos morum*" it violated the standard of morality set up by the Judges for the time being. Public opinion, and other causes well known to the student of English history, kept this assumed prerogative from ever going beyond limits good for the community, but had these checks not existed, it is easy to see how injurious this prerogative might have become. In fact the odious Star Chamber sought to exercise a similar power in a way dangerous to liberty. Here in India we have seen something of a similar kind. How beneficial has been the introduction of a regular

Criminal Code, instead of those "General Regulations" under which, quoted thus generally, a man could have been subjected to almost any punishment for almost any act. Had English rule in India been of the nature of that of Roman proconsuls and pro-prætors in distant provinces, what oppression might have been perpetrated under the assumed sanction of the General Regulations!

The most important distinctions between felonies and misdemeanours at the present day are given thus by Mr. Stephen; *1st*, Felony involves forfeiture, and misdemeanour does not. *2nd*, The facilities for arresting a felon are greater than those for arresting a misdemeanant. *3rd*, The mode of trial for felonies and misdemeanours differs in many particulars. Felons, for instance, must in general be tried upon an *indictment* or *inquisition*, misdemeanants may be proceeded against by *information*. In addition to these distinctions, we may mention that no civil action lies for a wrong which constitutes a felony, until the injured party have taken steps to vindicate public justice by bringing the felon to punishment. If the wrong done only amount to a misdemeanour, no such preliminary prosecution is necessary. Although the division of offences into felonies and misdemeanours does not obtain in Indian criminal law, there are not wanting certain distinctions which evidently spring from similar sources. Act XXV of 1861 lays down a different form of procedure in the case of offences punishable with imprisonment not exceeding six months, and those punishable with a longer term of imprisonment. Most of those minor offences, which concern individuals only, will be found included in the former class, and we shall see hereafter that the procedure in these cases in many ways approaches the nature of a civil trial. We have also in Sections 213 and 214 of the Penal Code, and the Exception appended thereto, a distinction drawn between offences which consist only of an *act* irrespective of the *intention* of the offender, and for which act the person injured may bring a civil action, and those offences in which intention is an essential ingredient in the crime. Mr. Mayne remarks* that this exception is not so clear, as might be wished. He seems however to have in some respect missed the meaning of the words. He remarks "it can hardly be said of any act that "it is an offence irrespective of the intention of the offender. To "take the case of an assault, which is employed in the illustration, "the very definition of the term in Section 351 makes the "offence depend upon the intention." Certainly no act can in

* Commentaries on the Indian Penal Code, 3rd edition, page 137

general take place without an intention, and an assault could not take place without an intention on the part of the offender to commit the act constituting an assault. But it is the act alone that is the offence in the eye of the law, and not the act *plus* an intention existing independently of the act. To take for instance the example of criminal trespass. The mere *act* of entering into or upon property in the possession of another is no offence. It is this act *plus* the intent to commit an offence, or to intimidate, insult or annoy, that constitutes the offence punishable under the Penal Code. Take also the example of theft. The act therein is *moving* the property. Now there must be an intention to move, or the person moving could not do this act, but it is not this intention that together with the act makes up the notion of "theft." It is another intention, *viz.* the intention to take dishonestly. The intention therefore referred to in the exception above quoted is clearly an *intention dehors the act*, and the offences, the compounding of which is punishable, are those which consist of an act not the subject of a civil action *plus* an intention, while those offences which may be compounded with impunity consist *merely* of an act for which the person injured may bring a civil action, *i.e.* a *tort*. The law has constituted many torts offences, *i.e.* has affixed the sanction of punishment to what is merely a civil wrong; but, to reason with Bentham, although, whether a man commits an act knowingly and willingly or unwillingly and undesignedly, the immediate evil is exactly the same, yet the alarm which results is very different. We regard him who has done an evil with knowledge and *design* as a bad and dangerous man. It is the intention that alarms the public and renders the act one which on their account must be punished, although without this intention the immediate evil might only concern an individual.

"The world in general," says Mr. Taylor,* "regarded Mr. Bentham as a gentleman who delighted in paradox and wrote bad English, while in the judgment of even the discerning few, this great apostle of judicial reform ranked little higher than an ingenious theorist. But truth, though long discountenanced, will at length prevail; and thus by little and little, Mr. Bentham's opinions were at first canvassed, then recognized as correct, and finally in a great measure adopted by the legislature." These remarks were made with reference to Mr. Bentham's work on Evidence, but apply with equal force to his Principles of the Penal Code. Bentham classifies offences under the following heads—

* On Evidence, Vol. II.

1st.—*Private Offences.* Those which are injurious to such or such assignable individuals other than the delinquent himself.

2nd.—*Reflective Offences or Offences against One's Self.* Those by which the delinquent injures no body but himself; or if he injures others, it is only in consequence of the injury done to himself.

3rd.—*Semi-Public Offences.* Those which affect a portion of the community, a district, a particular corporation, a religious sect, a commercial company, or any association of individuals united by some common interest, but forming a circle inferior in extent to that of the community.

4th.—*Public Offences.* Those which produce some common danger to all the members of the State or to an indefinite number of non-assignable individuals, although it does not appear that any one in particular is more likely to suffer than any other.

With respect to the second class, Bentham remarks,—“Offences against one's self are, properly speaking, vices and imprudences. It is useful to classify them, not in order to subject them to legislative severity, but rather to remind the legislator by “a single word that such or such an action is beyond his sphere.” There remain therefore three classes, viz. I. Private offences, II. Semi-Public offences, III. Public offences, which are the proper subject of legislation. Bentham subdivides these classes, and, in the subdivisions, (whether it happened by design or chance,) we find almost the very heads under which offences have been classified in the Indian Penal Code. We place the two systems of classification before the reader.

BENTHAM.

I. *Private Offences.*

1. Offences against the Person.

2. Offences against Property.

3. Offences against Reputation.

4. Offences against the condition, i. e. against domestic or civil relations, such as the relation of father and child, husband and wife, master and servant, citizen and magistrate, &c.

THE INDIAN PENAL CODE.

Offences affecting the Human Body, Chapter XVI.

Offences against Property, Chapter XVII.

Defamation, Chapter XXI.

The Criminal Breach of Contract of Servants, Chapter XIX.

Offences relating to Marriage, Chapter XX.

Offences by or relating to Public Servants, Chapter IX.

Contempts of the lawful authority of Public Servants, Chapter X.

II. <i>Semi-public Offences.</i> (See definition above, and post.)	{ Offences affecting the Public Health, Safety, Convenience, Decency and Morals, Chapter XIV.
III. <i>Public Offences.</i>	
1. Offences against external Security.	{ Offences against the State, Chapter VI, Sections 125-6-7.
2 & 3. Offences against Justice and the Police.	{ False Evidence and Offences against Public Justice, Chapter XI.
4. Offences against the Public Force.	{ Offences relating to the Army and Navy, Chapter VII.
5. Offences against the Public Treasure.	{ Offences relating to Coin and Government Stamps, Chapter XII.
6. Offences against Population.	{ Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births, Chapter XVI, Part 2.
7. Offences against National Wealth.	{ Offences relating to Weighing and Measuring, Chapter XIII; and Offences relating to Documents and to Trade or Property-marks, Chapter XVIII.
8. Offences against the Sovereignty.	{ Offences against the State, Chapter VI. except Sections 125-67 (see above;) Offences against the Public Tranquility, Chapter VIII.
9. Offences against Religion.	{ Offences relating to Religion, Chapter XV.

In the order in which the different classes of offences are placed, and in one or two points of sub-division, the classification of the Penal Code differs from that of Bentham, but on the whole it is impossible not to be struck with the general coincidence of the two divisions. Following the order of the above table, we shall now compare the treatment of certain of the most important offences under the systems between which we have undertaken to institute a comparison.

Offences against the Person.—Of these the most important is that which involves the taking away of the life of a human being. If a man possessed of ordinary reason were told that, if

A went out to shoot and steal a fowl and in doing so killed a person who was lying behind a bush in front of which the fowl was standing when fired at, A could be hanged, though he had not the slightest idea that any person was behind the bush, or the most remote intention of injuring a hair of the dead man's head, we think he would be very much shocked indeed. Yet A could be hanged in England, but, in India, though he might be punished for the death of the *moorgh*i which he had intended, he could not be punished for the death of the man which he had not intended and could not even have supposed probable. To a layman there would be little doubt which is consonant with justice. The rule of English law is, that a felonious purpose, though it be wholly unconnected with any design to occasion death, yet constitutes, in conjunction with an *accidental* killing, the crime of *wilful* murder. This is an application to criminal law of the principle admitted in civil jurisprudence that every one who does an unlawful act is considered as the doer of all that follows.* But surely there is a wide difference between holding a man responsible in damages for the consequences of an act culpable in some respects, but, when committed, not intended,† or not in all probability likely to involve another kind of culpability, which an arbitrary rule of law attaches to it.

This is however only a single instance of the difficulties resulting from the law of murder being left to the Judges to be *made* from time to time, and from cases differing in circumstance and detail, instead of endeavouring to define popularly and intelligibly what shall constitute the offences of murder and manslaughter even though the definitions had to be altered and improved from time to time. "In a prosecution for murder," says Mr. Broom, "which is alleged in the indictment to have been committed of '*malice aforethought*,' it is not essential to shew that the prisoner had any enmity to the deceased, nor would proof of the absence of ill will furnish the accused with any defence, provided that the charge against him were established in other respects." It was *very* necessary to preface this exposition of the law by the remark that "the legal import of the term *malice* differs indeed somewhat from its acceptance in common

* See Smith's Leading Cases, Vol. 1, page 406.

† "It is a principle of natural justice," said Lord Kenyon in *Fowler vs. Padget*, 7. T. R. 514, "that the *intent* and the *act* must concur to constitute crime; *actus non facit reum nisi mens sit rea*: but with reference to civil liability, where the act occasioning an injury is unlawful, the intention of the wrong doer is, as we have just seen, immaterial." (See Warren's Law Studies, Vol. II, page 826.)

conversation." It would be difficult to apply this doctrine of "malice aforethought" in common conversation to the case we have above instanced of the man killed by the shot fired at the fowl. The ingredient of *malice* is what distinguishes murder, from 'manslaughter.' Malice is of two kinds, viz. *malice in fact* or *express malice*; and *malice in law*, or *implied malice*. Express malice is where one kills another with deliberate mind and formed design, as if a man without provocation strike another man with a murderous weapon or administer poison to him. There is no difficulty in this, but implied malice is not so easy to comprehend in its application. It is malice inferred or presumed by law from any deliberately cruel act.

"Malice in its legal sense," said Mr. Justice Littledale, "denotes a wrongful act done intentionally without just cause or excuse." Foster describes malice, in general, "as a wicked, perverse, and incorrigible disposition emanating from a heart regardless of social duty, and fatally bent upon mischief." "Malice," said Lord Campbell, "in the legal acceptation of the term is not confined to personal spite against individuals, but consists in a conscious violation of the law to the prejudice of another." Lord Tenterden said, "I take it to be a general rule that an act unlawful in itself and injurious to another is considered in both law and reason to be done *malo animo* toward the person injured." Mr. Baron Bayley said, "If I give a perfect stranger a blow likely to produce death, I do it of *malice*, because I do it *intentionally and without just cause or excuse*. If I maim cattle without knowing whose they are, if I poison a fishery, it is a wrongful act and done intentionally. If I am arraigned for felony and wilfully stand mute, I am said to do it of *malice*, because it is intentional and without just cause or excuse; and if I traduce a man, whether I know him or not, and whether I intend to do him an injury or not, I apprehend the law considers it as done of malice, because it is wrongful and intentional. It equally works an injury whether I meant to produce an injury or not; and if I have no legal excuse for the slander, why is he not to have a remedy against me for the injury it produces?" It will be quite evident that the above expositions of the meaning of the term *malice* are only in fact illustrations of its import. Not one of them approaches the character of a *definition*, if we apply Whately's test of what is a just definition and make malice the subject, and any of these descriptions the predicate of a proposition: for the subject and predicate will not be convertible terms. Though the idea contained in the expression *malice* may be very well imagined within certain wide regions of thought, it has hitherto never been attempted to confine it

within the limits of a definition. In fact as Mr. Stephen curtly puts it,—“Thus stated in plain words, the doctrine of implied malice amounted to a device, by which the Judges were able from time to time to declare any case of homicide, in which they thought the criminal ought to be hung, a capital crime. Malice is derived from *malitia*, wickedness, and the use of the word had thus a tacit reference to the standard of morality established in the nation. It would not seem very difficult with reference to this standard to define in what instances the act of killing shall be considered wilful murder. We shall show hereafter with what success the framers of the Indian Penal Code have endeavoured to accomplish the task. Before coming to this portion of the subject however, it will be necessary to notice the further divisions of such homicides as do not fall within the category of *murder*, which in accordance with the above principles has been defined by Lord Coke as follows: “where “a person of sound memory and discretion unlawfully killeth any “reasonable creature in being, and under the King’s peace with “*malice aforethought, either express or implied.*”

“*Manslaughter*,” says Mr. Roscoe, “is principally distinguishable from *murder* in this, that though the act which occasions the death is unlawful, or likely to be attended with bodily mischief, yet *the malice either express or implied which is the very essence of murder* is presumed to be wanting in manslaughter, the act being rather imputed to the infirmity of human nature.” Manslaughter is divided by Mr. Archbold into two kinds; 1st, ‘involuntary manslaughter,’ where a man, doing an *unlawful** act not amounting to felony, by accident kills another; or where a man by culpable neglect of a duty imposed upon him is the cause of the death of another; and it may be stated generally that that which constitutes murder being done by design and of malice prepenze in the eye of the law, constitutes manslaughter when arising from culpable negligence; 2nd, ‘voluntary manslaughter,’ where upon a sudden quarrel, two persons fight and one of them kills the other: or where a man greatly provokes another by some personal violence, and the other immediately kills him. Both murder and manslaughter are* felonies.

Non-felonious homicides are divided by Mr. Roscoe into 1st,—Justifiable homicide; 2nd,—Excusable homicide; and 3rd,—Homicide by misadventure.

Justifiable homicide is again subdivided by Mr. Archbold into three kinds— 1st,—Where the proper officer executes a criminal in

* The stealing of the fowl in the case given above would have been felony.

strict conformity with his sentence; *2nd*,—Where an officer of justice or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it; *3rd*,—Where the homicide is committed in prevention of a forcible and atrocious crime, as for instance, if a man attempt to rob or murder another and be killed in the attempt, the slayer shall be acquitted and discharged.

Excusable homicide is where the party killing is not altogether free from blame, but the necessity which renders it excusable may be said to be partly induced by his own act. This is Mr. Roscoe's definition, but Mr. Archbold divides excusable homicide into *1st*,—homicide by misadventure; and *2nd*,—where a man kills another upon a sudden encounter merely in his own defence or in defence of his wife, child, parent, or servant, and not from any vindictive feeling, which is termed homicide *se defendendo*.

Homicide by misadventure is where a man doing a lawful act without any intention of bodily harm, and after using proper precautions to prevent danger, unfortunately kills another person.

A careful examination of the cases given in the text books, will show how nice are the distinctions between the portions of this classification, and, in many instances, 'what thin partitions' divide one species of the offence from another.

Let us now examine the definitions of the Penal Code. "*Culpable homicide*," which includes both *murder* and *manslaughter*, is thus defined:—

"Whoever causes death by doing an act

1st,—with the intention of causing death, or

2nd,—with the intention of causing such bodily injury as is likely to cause death, or

3rd,—with the knowledge that he is likely by such act to cause death,

commits the offence of *culpable homicide*."

Culpable homicide then corresponds to felonious homicide as near as may be, and is subdivided into (1) Culpable homicide amounting to murder; and (2) Culpable homicide *not* amounting to murder. This division resembles that under English law into murder and manslaughter;—resembles, we say, for the limits of both subdivisions are by no means conterminous. Culpable homicide amounting to murder is thus defined—"Except in the cases hereinafter excepted, culpable homicide is murder,

"*1st*,—If the act by which the death is caused is done with the intention of causing death,* or

* Actual malice.

"2nd,—If it is done with the intention of causing such bodily injury as the offender knows to be *likely** to cause the death of the person to whom the harm is caused, or

"3rd,—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

"4th,—If the person committing the act knows that it is so *imminently dangerous* that it must in *all probability*† cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

The cases excepted are—

"1st.—When the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident, such provocation not having been sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person, nor given by anything done in obedience to the law or by a public servant in the lawful exercise of his powers, nor by anything done in the lawful exercise of the right of private defence.

"2nd.—When the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

"3rd.—When the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duty, and without ill will towards the person whose death is caused.

"4th.—When it (the culpable homicide) is committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner."

"5th.—When the person, whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

It would have been impossible for original ability of the highest order to have framed the above exhaustive definitions, had there been in existence no system of criminal law tested

* Actual malice.

† Implied malice.

by the experience of an enlightened and civilized nation. The authors of the Penal Code found their materials ready at hand in such a system existing in England. With what consummate skill they employed those materials, none can judge better than those who are conversant with that system, and while justly proud of its excellence as a corner-stone of the British constitution, have yet sufficient liberality and breadth of sentiment to see in their proper light those niceties, technicalities, and imperfections which have been the necessary result of piecemeal construction, and the inseparable concomitants of those experiences, which have adapted old and sound fundamental principles to a new state of things and to a civilization which far transcends the utopian dreams of those ancient sages, who had to deal with a state of society so much more simple, so much less highly organized, and so much less artificial than that which the discoveries of science have called into being. In raising a new edifice, it was indeed possible to benefit by those experiences of the past, and to avoid the proved or admitted imperfections of the old plan, and this is what the framers of the Penal Code have carefully and skilfully done, showing that it is practicable for England to codify her criminal law, and to collect all its excellencies in a small space, and in popular phraseology, from the undigested mass of precedents, cases, statutes, treatises, and text books, wherein they now lie scattered, like a goodly harvest through the fields waiting to be gathered into the granary.

To demonstrate effectually that the definitions of "culpable homicide" and of "murder" in the Penal Code contain all the choice parts of English substantive law on the same subject, would necessitate a notice of many precedents, cases, and arguments which would be impossible within the limits of the present article. Something of the subject may however be gathered from what we have already said on the question of *malice*. In order to illustrate the fact still further, and moreover to show that the Indian definitions exclude many imperfections of the English system, though about these same there be differences of opinion, we shall notice one or two other points of distinction. And first it is a rule of English criminal law, that where death is caused by negligence *without malice*, the person guilty of such negligence shall be indictable for manslaughter. The ordinary instances are where a person unacquainted with the effect of a powerful medicine or drug administers it to another; or where a person rashly and improvidently presents a gun at another and draws the trigger, not supposing it to be loaded when it is in truth loaded, and death results. In a case of this sort Mr. Baron Bayley said—"I consider that *rashness* will be sufficient to make it manslaughter. As for

instance, if I have the toothache and a person undertakes to cure it by administering laudanum, and says "I have no notion how much will be sufficient" and gives me a cup full which immediately kills me, such person acting with rashness will in my opinion be guilty of manslaughter." Now, under the Penal Code, those persons would not be guilty of culpable homicide for the *rashness* of the act merely, unless they knew that by such act they were *likely* to cause death. Mr. Mayne remarks* on the omission, and suggests that it may be a case of a crime overlooked, and therefore punishable under the old criminal law. We do not however think so, and applying the maxim "*actus non facit reum, nisi mens sit rea*," it was not, we believe, the intention of the framers of the code to punish as culpable homicide the result of mere rashness or negligence. Such a case is sufficiently met by the provisions of Sections 336-7-8. If the person doing the act was aware that he was likely to cause hurt or grievous hurt, the punishment is greater than for a rash or negligent act done without the knowledge that these results were likely to ensue. Though the offender is nominally tried for manslaughter in England, we doubt if the sentence in case of conviction ever exceeds the maximum allowed by these Sections.

Under English law the neglect of a personal duty, when death ensues as the consequence of such neglect, renders the guilty party liable to an indictment for manslaughter. The neglect must however be personal, and the death must be the immediate result of that personal neglect. Trustees appointed to repair roads under a local Act are not chargeable with manslaughter, if a person is accidentally killed in consequence of the road being out of repair, through neglect of the trustees to contract for its due reparation. A case might well be imagined in which under this rule a person might escape, though he knew that his omission would be likely to cause death. The Penal Code would however meet such a case, for acts include *illegal* omissions, and the word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or *which furnishes ground for a civil action*.

The law of self-defence, as set forth in the Penal Code, shows with what success the most difficult portions of the English criminal law may be codified. Mr. Mayne finds fault with it in one respect. "While the fear of death, hurt, or wrongful restraint, which causes theft to grow to robbery, continues," says he, "the offender may be killed, but when he takes to his heels with the booty, the robbery is over, and the right of defence is reduced to

* Commentaries on the Penal Code.

" what would have been admissible against a pick-pocket. This seems, as a mere matter of public policy, to be a grave error, and is certainly opposed to English law, which would allow a man to fire upon a highwayman while he was galloping away." If an argument from the utility of the case be of any avail, we might remark that when highway robbery was a common and a capital crime in a less organized state of society, the policy of the law could well be understood. But neither in England nor in India does there now exist a reason for maintaining or adopting such a rule.*

Under English law, if two persons deliberately fight a duel and one of them be killed, the other and his second will be guilty of murder. This severe rule had doubtless much to say to putting duelling out of fashion. The effect of the fifth Exception to murder under the Penal Code will be however to reduce the offence in India to culpable homicide not amounting to murder. Under both English and Indian law, even the fear of death caused by threats will not be a sufficient excuse for committing murder. The Penal Code, unlike English law, extends the same rule to offences against the State. Provocation by *words or gestures* alone, will not, under the law of England, France, and America, be sufficient to reduce the crime of killing intentionally or with a deadly weapon to manslaughter. The framers of the Code, greatly doubting whether any good reason can be assigned for this distinction, have put words and gestures on the same footing as any other provocation. "It is an indisputable fact," they say, "that gross insults by word or gesture have as great a tendency to move many persons to violent passion as

* Connected with the law of the Right of Private Defence, though touching on another point, we may notice the case of *Durwan Geer* recently decided by the Calcutta High Court. The prisoner, alarmed by a boy living in the same house, came and found a burglar in the act of coming through a hole in the wall and entangled in the hole. He seized the burglar; a struggle ensued, and fearing escape, as he said, he called to the boy to bring a *kodalee* that was near, intending, as he admitted, to kill the burglar, and he accordingly did so. Two out of three Judges held that they were bound to convict for "murder" under the Penal Code. The third Judge held it only culpable homicide not amounting to murder, and his arguments appeared to have great weight. It would be impossible to give any correct opinion without seeing the depositions, but the case seemed well within the second Exception to Section 300, and stronger than the Illustration to this Exception. The prisoner's admission that he *intended to kill* the burglar doubtless told against him, but a similar intention is inferrible from A drawing the trigger of the pistol to shoot Z, yet A only committed culpable homicide. Cases like this test the definitions of the Code. The prisoner could not have been convicted of murder under English law. See Roscoe, pages 711 and 712. Archbold, pages 546-47.

“dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain.” We quite agree with the Commissioners, more especially having regard to the vituperative capabilities of some of the languages of India.

★ Under the 88th Section of the code no act is an offence, which, not being intended to cause death, is done in good faith for the benefit of a person *with that person's consent*. The illustration is as follows:—“A surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending in good faith Z's benefit, performs that operation on Z *with Z's consent*. A has committed no offence.” Mr. Mayne in his note to this Section remarks,—“Even where no actual consent could possibly have been given, as in the case of a patient, who had not been informed of the necessity of any operation, and who was suddenly given chloroform, I have no doubt but that the mere fact of his having placed himself under medical care carried with it an implied consent to do everything necessary and proper for a cure.” Further on, he says,—“A more difficult case would be where the party expressly withheld his consent, though the act were admitted to be for his benefit, and for the sole purpose of saving his life. Such a case might possibly arise where a timid patient could not nerve himself to undergo an operation however necessary. Such a case is not provided for by this Act, and, should it arise, the surgeon, if he wished to be absolutely safe against subsequent charges, would be compelled to leave the sufferer to his fate. Of course, if such a charge were brought, the punishment could be no more than nominal.”

We cannot concur with the commentator in the last portion of the above extract. We agree with Bentham, who says,—“The case is very different, if a man, master of his faculties and able to consent, thinks proper to refuse it. Shall we give his friends or physicians the right to force an operation, which he declines?

This would be to substitute a certain evil for a danger almost imaginary. Distrust and terror would watch by the sick man's bed. If a physician through humanity goes beyond his right, and the experiment turns out unfavourably, he ought to be exposed to the rigour of the laws, and his intention at most should only serve as an extenuation of his offence.” From their making no exception in favour of this particular case, it would appear that the framers of the Code were of the same mind as Bentham. The text books do not furnish any parallel case in English law; and would scarcely seem to contemplate the performing of dangerous surgical operations without the consent of the patient.

Under English procedure, the burden of proving any of the exceptions which will reduce the crime of murder to manslaughter will fall on the accused person. "The general result of the use of the word malice (in an indictment, *i.e.*)," says Mr. Stephen, "and of the doctrine that malice is an essential element of crime is to throw upon persons, who commit acts of a particular class, the burden of proving that they were not done under the circumstances contemplated by the legislature, but at the same time to permit them to give evidence to that effect." Similarly Mr. Taylor; "On a charge of murder, malice is presumed from the fact of killing unaccompanied by circumstances of extenuation; and the burthen of disproving the malice is thrown upon the accused."* In Indian law this is considerably modified, at least as far as the facts contained in the five exceptions under the definition of murder are concerned, for, under the provisions of the Criminal Procedure Code, the existence of the circumstances constituting these exceptions must be denied most distinctly in the charge;† and according to the usual rule, negative averments must be proved by the prosecutor, unless the subject thereof relates personally to the defendant, or is peculiarly within his knowledge. This and the fact of his witnesses being produced at the trial and remunerated for their attendance by Government, gives a prisoner, charged with the crime of murder in this country, a much better chance of establishing his innocence than he has in England.

With respect to *attempts* to commit murder, "it seems hardly credible," says Mr. Stephen, "but it is nevertheless true, that up to the year 1861, an attempt to commit murder was as such only a common law misdemeanour, punishable with a maximum of two years' imprisonment and hard labour." The offence is however adequately provided for by Section 307 of the Penal Code. It has been subsequently legislated for in England by 24 and 25 Vict. Cap. 100.

If two persons mutually agree to commit suicide together, and accordingly take poison or attempt to drown themselves together, but only one of them dies, the survivor is guilty of *murder* under English law, and could be hanged. "That this is a hard case," says Mr. Stephen, "is apparent from the fact that in practice no one would be executed for such an offence. Suicide may be

* Work on Evidence, Vol I, p. 127.

† See form of a charge for murder prescribed by the Calcutta High Court. III. *Weekly Reporter*, Criminal Letters, page 7.

“ wicked* and is certainly injurious to society, but it is so in a much less degree than murder. The injury to the person killed can neither be estimated nor taken into account. The injury to the survivor is generally small.” Applying also Bentham’s test, the offence creates little or no alarm. The Penal Code has made a great improvement on English law by reducing the punishment for this offence, except in the case where suicide by a minor or insane person is abetted.

We shall notice a few other offences against the person ; and first with respect to rape. Where a prisoner got into a woman’s bed at night, and pretending to be her husband had connection with her, the woman being a consenting party under the idea that he was in fact her husband, eight Judges out of twelve held that the offence was not rape, and the Court of Criminal Appeal subsequently upheld the decision. The definition in the Penal Code most properly however includes such a case within the category of rape. Touching the same subject, we may remark that under the code, if a girl between the ages of ten and twelve years consent, there will be no offence. Under English law the consent in this case only reduces the crime from felony to misdemeanour.

The definition of “ assault” in the code corresponds closely to the idea of this offence in English law. It might be objected that the ‘present ability’† to use criminal force is not sufficiently set forth in the definition, but it may be contended in reply, that Z cannot *reasonably* believe

* Archbishop Whately has in his work on Logic well pointed out the fallacy that lies in the popular conception of the sin of suicide from its being termed *self-murder*. The Poet Blair has beautifully expressed the same idea.

Our time is fixed : and all our days are numbered,
How long, how short, we know not : this we know,
Duty requires we calmly wait the summons,
Nor dare to stir till heaven shall give permission.
Like sentries that must keep their destin’d stand,
And wait th’ appointed hour, till they’re relieved.
Those only are the Brave, who keep their ground,
And keep it to the last. To run away
Is but a coward’s trick : to run away
From this World’s ills, that at the very worst
Will soon blow o’er, thinking to mend ourselves
By boldly venturing on a World unknown,
And plunging headlong in the dark ! Tis mad :
No Frenzy half so desperate as this.

† See Addison on Torts, page 482, and Broom’s Commentaries, page 925, the illustrations of which latter passage correspond almost exactly to those of the Penal Code.

that A is likely to strike him, if A is not near enough to do so. "Criminal Force" corresponds to "Battery" in English law, and is certainly a far more appropriate term. "Grievous Hurt" probably derived its appellation from the 'grievous bodily harm' of English law, and possibly the definition of this offence may have been in some way suggested by *Mayhem*, which was the 'deprivation or injury of any member of the body which is available for fighting, such as a leg, an arm, an eye, or a front tooth (though not a jaw tooth!), or otherwise injuring a person corporally in such a manner as to diminish his power of fighting or defending himself. The framers of the code have however considerably improved on the idea, besides modernizing it by substituting capability to labour for capability to fight.*

✕ *Offences against Property*.—"Theft" in Indian law corresponds to "Larceny"† in English law, though, as we shall see, by no means exactly. According to Bracton.—"*Furtum est tractatio rei alienæ fraudulenta, animo furandi, invito illo cujus illa res fuerit.*" Mr. Roscoe points out how he copied this (as he did most of his law) from the Roman Code, and in doing so mistook a civil trespass for a crime. Bracton's definition was however adopted into English jurisprudence. In East's Pleas of the Crown larceny is defined to be "the wrongful or fraudulent taking and carrying away by one person of the mere personal goods of another with a felonious intent to convey them to his (the taker's) use, and make them his own property without the consent of the owner." Eyre C. B. defined larceny as "the wrongful taking of goods with intent to spoil the owner of them *lucris causâ*." Blackstone says,— "The taking must be felonious, that is, done *animo furandi*, or, as the civil law expresses it *lucris causâ*." Mr. Roscoe remarks that "the point arrived at by these two expressions, *animo furandi* and *lucris causâ*, seems to be this, that the goods must be taken into the possession of the thief with the intention of depriving the owner of the property in them;" and he further urges the necessity of a clear appreciation of the difference between *possession* and *property*, in

* In closing our notice of offences against the person, (on which subject there is much useful matter, which must be excluded from this article by reason of its natural limits) we may mention the recent case which occurred in London. A musician was returning from an evening party with his violin under his cloak. A policeman in plain clothes suspecting him to be a burglar gave chase. He fled believing he was pursued by a garotter. The policeman seized him, and a struggle ensued in which he wounded the former. He was committed for trial. In India he would have been protected, as the mistake was one of *fact*. (Section 79 of the Penal Code).

† French *larcin*, Lat. *latrocinium*. Wharton's Law Lexicon. Q. V.

order to a right conception of larceny and the kindred offences of embezzlement, and obtaining by false pretences. We may add that the admonition is equally useful in Indian law. The words *lucri causâ* were at first a considerable difficulty to the Judges. Where the prisoner, to screen an accomplice who was indicted for horse-stealing, broke into the prosecutor's stable, and taking another horse backed it into a coal-pit, and killed it with the intention of having it thought that the loss of the first horse happened in the same way, it was objected that this was not larceny, as there was no intention to convert the horse to the use of the taker. Six out of seven Judges however held that it was larceny, and that it was not essential that the taking should be *lucri causâ*, if it be fraudulent and with intent *wholly* to deprive the owner of the property. The Judges in this and several other cases clearly saw that the gain of the taker was manifestly wanting in cases that came however within the preconceived idea of larceny. Specious arguments were resorted to, in order to make out the taker's gain in several of such cases, but they were not satisfactory, and rather than adopt them, it was decided that the taker's gain was not an essential ingredient in the offence. It was reserved for the framers of the Penal Code to follow the strict moral and philosophical view of the subject, by grasping the whole idea in its entire comprehensiveness and inherent reciprocity. When this had once been done, we can only wonder that it was not done long before by some of the eminent Judges, who from time to time expounded the law of larceny. The offence is the same whether the result of it be to cause gain to one person or loss to another person. The framers of the code first, therefore, defined "wrongful gain" as *gain by unlawful means of property to which the person gaining it is legally entitled*, and "wrongful loss" as *loss by unlawful means of property to which the person losing it is legally entitled*. They then laid down that "*Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing*" "DISHONESTLY." And having thus prepared the materials for their definition, they defined "Theft" as follows:—

"Whoever, intending to take *dishonestly* any movable property out of the possession of any person *without that person's consent*, moves that property in order to such taking is said to commit "theft."

Now the full force of this definition will be seen, if for the word "dishonestly" we substitute its definition as given above: the idea of *lucri causâ* is preserved, while the correlative idea,

or rather the other half of the idea, *viz. damni causâ** is added.

We have said above that the Judges ruled that in order to constitute larceny, it was necessary that the object of the taker should be *wholly* to deprive the owner of the property: or to take the *possession* with the intent of depriving the owner of his *property* in the goods. Looking to the strictness with which the matter of old indictments had to be proved, it might be supposed that it would in consequence have been always necessary to prove an intention to deprive the owner of all the goods or of the whole article alleged in the indictment to have been stolen. But such was not the case. Proof as to part of the goods or as to a portion of the article, *e. g.* some of the mutton of stolen sheep, was held sufficient. How much more logically is the conception followed up by the use of the words "wrongful gain" and "wrongful loss." A total deprivation of the owner's property in the goods or in a portion of them is then an essential of the English crime of "larceny." A practical deprivation will be sufficient to constitute the Indian offence of "theft." This will appear clearly from what has been said, from examining the definition, and from some of the illustrations.

✕ All "movable property" is the subject of theft, and movable property is defined to include "corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth." And the explanation to Section 338 further adds that "a thing so long as it is attached to the earth, not being movable property is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth." Now to understand this exactly, we must be told that under English law anything which savoured of the realty, whether it was the substance of the land, as lead or other minerals; or the produce of the land, as trees, corn, grass, or other fruits; and also fixtures, could not be the subject of larceny, neither could documents such as title-deeds, &c. for they only evidenced a right to real estate; neither could animals *feræ naturæ*, such as deers, hares, or conies in a forest chase or warren, fish in an open river or pond, or wild fowl at their natural liberty; nor yet dogs, for "in respect of the baseness of their nature, they shall never be so highly regarded at law, that for their sakes a man shall die,"† *i. e.* when larceny was a hanging matter. Cats (including

* *i. e. cum injuriâ.*

† See Smith's Leading Cases, I, 378.

poilecats), monkeys, apes, foxes and bears, though tamed, were in the same predicament, and were outside the pale of the law and its protection. The definition in the Penal Code has at one stroke swept away all distinctions and made all these exceptions* of English law the subject of theft. Will any one say that it is not an improvement on English law, which, notwithstanding the recent Consolidating Acts, yet treats separately the stealing of horses, cows and sheep; the stealing of dogs; the stealing of records; the stealing of wills; the stealing of documents of title to real estate; the stealing of lead, metal or fixtures; the stealing of ore; the stealing of trees; the stealing of plants; the stealing of fish: the stealing of deer, &c. &c.?

Under English law, the goods stolen should be proved to be the property of the person named in the indictment. If he be mis-named, or if it appear that the owner is another and a different person, the variance, unless amended, will be fatal, and the prisoner will be acquitted. Where goods were in the possession of a bailee, as merchandise in the hands of a common carrier, cloth with a tailor, linen with a laundress, it was sufficient to describe them as the property of the bailee. Where goods are the property of several, they must be so described, or as the property of A, B, and another or others, as the case may be. If they belong to three or more persons, and be described as the property of A, B, and another, it will not be sufficient. This was a mere legal fiction in many cases, goods being stated to be the property of persons who had no property in them, though they had them in *possession*. The definition of the Penal Code only requires proof that the goods were in the possession of the person, out of whose possession they are alleged to have been taken.

With respect to the *dishonest intention*, the Indian definition requires that it should exist at the time of the taking. If there be no dishonest intention at the time of the taking, a subsequent conversion will be criminal misappropriation, not 'theft.' This is generally speaking the rule of English law also, though there are one or two cases that seem to have a different bearing. For instance, when a man put twenty-nine lambs of his own into a field, and in taking them out took another lamb belonging to another person and then sold them all together, the jury found that at the time of leaving the field, the prisoner did not know that the prosecutor's lamb was in his flock, but that at the time he sold it, he had a felonious intention. In this case however it

* Illustration (b) to Section 378 makes special mention of dogs. Cats are not however honoured with any special notice.

cannot be said that the prisoner *took* the lamb, until he was aware that he was driving it with his own lambs. If he became aware of this fact and sold the animal almost immediately (as would appear to have really been the case) it would be theft, as it was ruled to be larceny. Yet there are acts which, though amounting to larceny under English law, would not constitute theft under Indian law. For example, it was ruled to be larceny, where the prisoner found a bank note on the highway. There was no name or mark on it indicating the owner. The day after he was informed that the prosecutor was the owner* and had accidentally dropped it. He notwithstanding changed it and appropriated the money to his own use. Again, where a person bought a *bureau* at an auction, and subsequently discovered therein a secret drawer containing several sovereigns, having appropriated this money, he was found guilty of larceny. Both these would be cases of criminal misappropriation under the Penal Code, which, in this respect, follows Lord Coke's rule "that if one lose his goods and another find them, though he convert them *animo furandi* to his own use, 'it is no larceny.' The following is an instance of an act, which would not be criminal under English law, being made an offence under the Penal Code. "If there be joint-tenants or tenants-in-common of a personal chattel," says Hale, "and one of them carry away and dispose of it, this is no larceny." There is in fact no taking, for he is already in possession, it is merely the subject of an action of account or a bill in equity. But, under the Penal Code, it would be "criminal misappropriation."† It is on the above‡ principle that a wife cannot be convicted of stealing her husband's property under English law, because in law they are but *one person*; they are joint-owners. Would the same principle hold good in India? The wife might be convicted of criminal misappropriation, it would seem. But as the Hindu or Mahomedan husband does not endow his wife with all his worldly goods, and as Indian law does not regard husband and wife as one person,|| and Section 27 of the code

* Illustration (b) to Explanation 2 Section 403 of the Penal Code is a stronger case, for the finder knew *at the time of finding* to whom the note belonged. This would be a clear case of larceny under English law.

† See Illustration (c) to Section 403 of the Indian Penal Code.

‡ Husband and wife are however neither *joint-tenants* exactly (for the *jus accrescendi* does not hold entirely good, the wife being entitled to a portion only of the personal effects on the death of the husband intestate) nor *tenants in common* as there are not two estates but one. *En passant* members of a Hindu undivided family are often called *joint-tenants*, but the *jus accrescendi*, which is an essential not an accident of *joint-tenancy*, does not exist. They are rather *tenants in common*.

|| The Indian Succession Act distinctly recognises a *dual* number in matrimony.

declares the possession of a person's wife to be the possession of that person within the meaning of the code, it may be a question, if a conviction for theft would not stand good.

There is another class of cases which fall within the category of larceny, but which would be excluded by the definition of theft. They however find a place under the head of 'cheating.' The following instances will describe the class. One Major Semple hired a chaise, at the time intending (as found by the jury) to convert it to his own use. He took it away with his own horses and never returned it. He was convicted of larceny. The practice of "*ring-dropping*," formerly in vogue, was held to be larceny. The prisoner in presence of some intended dupe pretended to pick up a purse containing a receipt for £147 for a "rich brilliant diamond ring" and *also the ring itself*. The dupe was persuaded to give all the money he had about him, and sometimes his watch and chain, for or in part payment of this so-called valuable ring, which was in reality paste, and which was sold or handed over for a half or a third of its pretended value. The recently invented trick of inducing people to play at skittles in order to cozen them out of their money has been similarly treated. So also a gipsy, who obtains money or goods by a false pretence of witchcraft is guilty of larceny. The ground of the decision in all these cases is, that the possession has been obtained by fraud. They however nearly all fall under the head of obtaining money or goods by false pretences, and Mr. Archbold considers it safer and more prudent to draw up the indictment as for this offence. We have said that they will come under 'cheating' in Indian law. The words 'without that person's consent' will exclude them from the definition of 'theft,' *i. e.* generally speaking, for we must also bear in mind Section 90, which declares that "a consent is not such a consent as is intended by any Section of this code, if given by a person under fear of injury or *under a misconception of facts*, and if the person doing the act knows or has reason to believe that the consent was given in consequence of such fear or misconception." Applying this to illustration (a) to Section 415, it would appear that A, who by falsely pretending to be in the Civil Service dishonestly induces Z to let him have on credit goods for which he does not mean to pay, and who is thereby guilty of "cheating," might also be convicted of theft, if Z gave his consent under a misconception as to the fact of A being a member of the Civil Service.

In respect of the aggravations to the offence of stealing, there is some distinction between English and Indian law. The aggravations of the former in respect of the nature of the thing

stolen, *e.g.* cattle, wills, articles in process of manufacture, have not been adopted in Indian law. Those however touching the manner, as with or without violence, putting in fear, &c. have been pretty nearly reproduced in the code. With respect to *the place from where* the thing has been stolen, the distinctions have been diminished in number, *e.g.* stealing from the person, from a ship in the harbour, a ship in distress, find no place in the Code. With respect to *the person by whom*, the distinction between mere strangers and those holding fiduciary relations has been maintained. Touching the *value* of the thing stolen, the Penal Code makes it no matter of aggravation, that the value thereof be great in comparison with the majority of cases. The Madras High Court has arbitrarily ruled that regard shall be had to the value of the thing stolen in deciding the tribunal before which the case is to be decided. No doubt, proper regard should be had to this point in sending an individual case to, or withdrawing it from any tribunal, but to lay down any general rule on the subject is to limit the law, which without any limitation has conferred jurisdiction in cases of theft on all magistrates, whatever be their powers. The wide limits within which the punishment for each offence can be fixed by a criminal Judge, leave full scope for dealing with those circumstances of aggravation, each of which occupies a separate Section of the English Statute-Book. Magistrates of all grades should be careful to apportion their punishments with reference to the above principles, and not to lash with the terrible cat him who is only deserving to be whipped with a birch rod, thus leaving nothing to add *in terrorem* of those who commit the offence with all its aggravations.

We are compelled by our limits to notice but briefly the other offences against property. The careful student will find that the definition of "*Criminal Breach of Trust*" will cover larceny by bailees and numerous frauds by persons occupying fiduciary positions, some of which have to this day eluded the grasp of English Criminal Law, notwithstanding the many changes and improvements, that have been made within the last 30 years in order to meet and check the fraudulent devices of those, who, amid the multitudinous dealings of a great mercantile community, have used their cunning and their industry to discover paths of dishonesty where the law could not touch them. The definition of "*cheating*" helps to the same end. There was no definition in the whole code about which more doubt was entertained at first. It was said that almost anything could be made out to be cheating, and that in making a false statement as to a future fact sufficient to constitute this offence, a most unwise

and unsafe advance was made on English Criminal Law. But in truth the Code did not so much make the offence to consist in a false statement as to a future fact as in a similar statement as to an *existing intention*. A false statement as to a man's *belief* has never been doubted to be perjury, and in what respect is a false representation as to an *existing intention* less criminal than a similar statement as to an *existing fact*? The only difference is as to the difficulty of the proof, and this objection holds equally in the two parallel cases. The definition of 'cheating' has not yet worked any mischief that we are aware of, but we know it to have done some good.

"Robbery" under English law is defined to be "a felonious taking of money or goods of any value from the person of another or in his presence against his will *by violence or by putting him in fear*." Where in snatching a diamond-pin fastened in a lady's hair, part of the hair was torn away with it, the violence was held sufficient to constitute robbery. Similarly where a thief ran violently up against a person for the purpose of diverting his attention while he picked his pocket. With respect to the 'putting in fear,' the fear might have been that of injury to the person, property or reputation. Instances are, where the prosecutrix gave money to a man who attempted to violate her in order to induce him to desist; where a mob entered a house during the Birmingham riots, and the prisoner got money, having threatened that, if it were not given, the house should be pulled down; and where the prisoner obtained money by threatening to accuse the prosecutor of an unnatural offence. Many of these cases would not constitute 'robbery' under the Code, which requires a higher degree of actual violence, *viz.* death or hurt. Where no actual violence is committed, the *fear* of instant death or of instant hurt or of instant wrongful restraint to the person put in fear or to some other person will be sufficient to constitute 'robbery' under the Code. The fear of death or hurt would make up the crime of robbery at English law: but neither wrongful restraint nor the fear of wrongful restraint without actual violence would amount to this offence.* Again, the fear of injury to property or reputation, though with theft amounting to robbery under the same system of jurisprudence, will only be "extortion" under the Code, and with respect to extortion we may further remark that it comprises many offences, which would not be robbery and which are provided for by separate Sections of English statutes. The fear of injury, it will be observed, may be of injury to the object of the extortion or

* See the case of *R. v. Knewland*, Roscoe, p. 845-6.

to any other person, and injury denotes (S.44) any harm whatever illegally caused to any person in body, mind, reputation or property. A threat of injury to the reputation of another person would not support an indictment for robbery under English law, and we doubt if a threat of injury to the property of another would support it either. Where robbery was committed in England by threatening to charge a man with an unnatural offence, it was held that it would be no defence to prove that he was actually guilty of it. Similarly it would doubtless be no defence to a charge under the code of extortion by threatening the reputation in any way, to prove that the injurious matter was true.

The term 'Burglary' does not occur in the Penal Code. Lord Coke defines a 'burglar' as "he that in the night-time breaketh "and entereth into a mansion-house of another, of intent to kill "some reasonable creature or to *commit some other felony* within "the same, whether his felonious intent be executed or not." The night has been by statute declared to extend from 9 p. m. to 6 a. m. "House-breaking by night" is the corresponding offence under the Penal Code, which declares the night to be from sunset to sunrise. The absence of long twilights in this country makes the rule more appropriate than it would be in England, where however the same rule formerly prevailed till altered by statute. Where entrance had been obtained by fraud or artifice, this would be a sufficient constructive breaking under English law; as when the prisoner, knowing the family to be in the country, promised the boy who kept the house a pot of ale, and while he went for it, robbed the house; also when persons intending to rob a house took lodgings in it, and then fell on the landlord and robbed him. These cases would not be house-breaking under the Code. On the contrary, under English law, "burglary cannot "be committed in a tent or booth erected in a market or fair, "although the owner may lodge therein, for the law regards thus "highly nothing but permanent edifices." The offence of 'house-breaking-by-night' would however be committed in India equally in a tent or bamboo hut as in a *pucca* building, provided only it were used as a human dwelling or as a place for the custody of property.

Under the head of "mischief" in the Code fall what are called in English law "malicious injuries to property." The Code however makes no distinction arising out of the fact of the offence being committed by *night* instead of by *day*, though it takes into consideration the value of the thing injured as matter of aggravation. Malicious injuries perpetrated by night are more difficult to detect, and, in accordance with the

established principle, should be punished more severely when detected.

Offences against Reputation.—Every one who has studied the Penal Code, however cursorily, knows that ‘Defamation’ includes both ‘Libel’ and ‘Slander’ at English law, the former being punishable *criminally* and the latter *not*. Mr. Serjeant Hawkins defines a Libel to be “a malicious defamation expressed *either in printing or in writing*, and tending either to blacken the “memory of one that is dead, or the reputation of one that is “alive, and expose him to public hatred, contempt or ridicule.” The defamation must be in printing or writing. “Slander in “writing or in print,” says Mr. Addison,* “has been always “considered in our law a graver and more serious wrong and “injury than slander by mere word of mouth, inasmuch as it “is accompanied with greater coolness and deliberation, indicates “greater malice, and is, in general, propagated wider and further “than oral slander.” Libel is punishable under English law by a criminal prosecution and by a civil action. Not so oral slander. It is in no case the subject of criminal proceedings, and in order to afford ground for a civil action, it must appear that the defamatory words have occasioned special damage; for instance, reflections on a young lady’s chastity will not be actionable, unless she have lost a marriage thereby; or some indictable offence must have been imputed; or it must have been alleged that the person slandered is afflicted with some contagious disorder, as leprosy; or the person being a tradesman or professional man must have been charged with misconduct, gross ignorance, or incapacity in respect of his trade or profession; or the words must impute official misconduct to a person in an office of profit or trust. Oral slander, on falling under some of the above heads, is not even civilly actionable at English law. To call a man a scoundrel or blackguard or swindler or rogue or blackleg is not sufficient ground for an action, as no man can be indicted for being such. But to impute bigamy, forgery, or the receipt of stolen goods is actionable, as these are indictable offences. Under Indian law however, all the above would be criminally punishable for “*Whoever by words either spoken or intended to be read “or by signs or by visible representations makes or publishes any “imputation concerning any person, intending to harm, or knowing “or having reason to believe that such imputation will harm the “reputation of such person, is said to defame that person,*” and may be punished with simple imprisonment for a term, which may extend to two years, or with fine, or with both. It will scarcely be

* Addison on Wrongs and their Remedies, pp. 679-80.

contended that some of the cases given above, which are not even civilly actionable under English law, have not properly been brought within the pale of the Criminal Code. At the same time the distinction between libel and slander, between written and oral defamation, and between the different imputations which amount to defamation, cannot be borne too carefully in mind in adjudging the punishment in each individual case. The Penal Code has yet been but a few years in operation. There is no intelligent public opinion in the Mofussil to canvass the work of judicial officers; though in small centres around the Presidency Towns and other places of importance, the germ of such an organ is even now appearing. As education extends these centres more and more, that germ will be gradually developed, and the criminal law of the country as well as everything else will be canvassed by the people. Let it not then be hastily taken for granted, that the Penal Code has been an entire success, because as yet there have been few complaints. In order to make the Code a complete success, and to establish it as one of the permanent institutions of the country, it must be liberally and intelligently administered. The very wide discretion as to punishments vested in judicial officers, in consequence of the different *species* of the same offence not being individually enumerated under the *summum genus* in which they are contained, and to which is affixed merely a *maximum* of punishment, will require magistrates of all grades to discriminate carefully between the minor and aggravated species of each offence in awarding the penalty to any violation of the law. To no class of crimes provided for by the Penal Code do these remarks apply more particularly than to "Defamation."

The Penal Code in respect of this offence, as of most others, embodies the latest improvements of English law, including the provisions of Lord Campbell's Act, which permits a defendant in a criminal prosecution for libel to plead that the matter thereof is true, and that it was for the public benefit that it should be published. Before this Act was passed, it was not allowed to prove in defence that the matter of the libel was true, hence the saying, "the greater truth, the greater libel," for as Blackstone said,—*"It was immaterial with regard to the essence of a libel, in a criminal prosecution for it, whether the matter of it be true or false; since the provocation to disturb the public peace and create animosity is the whole that the law considers and punishes criminally."** And this leads us to remark that in one other

* Lord Campbell would seem however only to have restored the law to its former condition.—See his own note in the "Lives of the Chancellors," Vol. III, p. 278, where he says,—*"So late as Queen Anne's time, Lord Holt,*

respect the law of *defamation* differs from the law of *libel*, viz. that the offence of defamation under the Code consists in the injury to the individual affected by the calumny, and not in any supposed tendency of the act to bring about a breach of the peace. This may have considerable influence on the interpretation of the law. For instance, writing a letter containing a libel, though its contents were known only to the sender and the libelled receiver, was a sufficient publishing under English law, as *provocation to a breach of the peace* was thereby given. Now, as *harm to the reputation of the receiver* of the letter could scarcely accrue, if he kept his own counsel, and the imputation were not otherwise published, it might be questionable if any offence under the Code had been committed. In concluding this subject, we may remark that the offence of threatening to publish a libel in order to extort money, &c. punishable under the 6 and 7. Vict. cap. 96, comes in Indian law under the head of Extortion or Attempt at Extortion as the case may be.

Offences against the Condition.—Under this head of Bentham's fall "Contempts of the Lawful Authority of Public Servants," "The Criminal Breach of Contracts of Service," and "Offences relating to Marriage." The first class requires little notice. There are only two points new to English law. The omission on the part of certain persons to give information of the occurrence of particular crimes is made an offence under the Code in accordance with immemorial custom in India; and the particular character of our Revenue Administration requires, that persons in office should be deterred from bidding for property sold at public auction. The breach of certain contracts of service has been almost of necessity rendered criminally punishable, owing to the Punic faith of the lower order of employees in India. It has been often sought to extend the principle, and apparently on good grounds. The relation of master and servant with reference to the class of domestics is on a most unsatisfactory footing, and urgently requires regulation at the hands of the legislature.

The portion of the Penal Code concerning offences relating to marriage is most undoubtedly strong in the aid of morality. With the exception of bigamy, the offences are all new to English law, which does not punish criminally illicit intercourse

"in Tuchin's case, called upon the defendant to prove the truth of his charges, "and the judge-made doctrine that 'the greater the truth, the greater the libel,' now statutorily repealed, was of later origin." May not Blackstone's *dictum* given above have had much to say to making this doctrine ?

with married women or in any way interfere with penal provisions, when the woman is a consenting party and over the age of twenty-one years. The question whether adultery should be made a criminal offence has been often and ably discussed. We have not space to recapitulate the arguments here. It has moreover been urged that while the adulterer is criminally punishable, it is not right that the adulteress should go free. We certainly take part with those who would punish the woman as well as the man.

"The confusion of progeny," said Dr. Johnson, "constitutes the essence of the crime; and therefore a woman, who breaks her marriage vow, is much more criminal than a man who does it. A man, to be sure, is criminal in the sight of God; but he does not do his wife a material injury, if he does not insult her."* Dr. Johnson's argument is at the bottom of the law of divorce in England. A man can obtain a divorce for his wife's adultery, but a woman cannot obtain a divorce for her husband's adultery, however flagrant and persevering. If the woman is more guilty in the eye of the Divorce Act, why should she be less guilty in the eye of the Penal Code?

Semi-Public Offences.—Under this head come offences affecting the public health, safety, convenience, decency and morals, as treated in the Penal Code. All these fall under the general head of "nuisance," which, derived from *nuire*, to hurt or annoy, is, as Mr. Addison remarks, applied in the English law indiscriminately to infringements upon the enjoyment of proprietary and personal rights. Nuisances are of two kinds, public and private. A *private nuisance* arises from neglect of the maxim '*Sic utere tuo, ut alienum non lædas*,' and is defined by Blackstone to be anything done to the hurt or "annoyance of the lands, tenements or hereditaments of another." The remedy is by civil action. A *public nuisance*, also called a *common nuisance*, is defined by the same author to be "an offence against the public order and economical regimen of the State, being either the doing of a thing to the annoyance of all the King's subjects, or the neglecting to do a thing which the common good requires." The term 'all the King's subjects' is used with some latitude. It will be a public nuisance if, in the

* "Is it not hard," asked Boswell, "that one deviation from chastity should so absolutely ruin a young woman?"—"Why no, Sir," replied Johnson, "it is the great principle which she is taught. When she has given up that principle, she has given up every notion of female honour and virtue, which are all included in chastity." Johnson had high ideas of marriage. He says elsewhere,—"*Marriage is the best state for man in general; and every man is a worse man in proportion as he is unfit for the married state.*"

words of Vice-Chancellor Kindersley, the thing complained of be "such as in its nature or consequences is a nuisance, an injury, or a damage to all persons who come within the sphere of its operation, though it may be so, in a greater degree, to some than it is to others." The remedy for a public nuisance is by indictment, and no civil action will lie, unless special damage be incurred by some private individual. For example, if the Calcutta Municipality were to leave a hole in one of the streets unfenced and without a light at night, the members of the Municipality could be criminally indicted for a public nuisance, but could not be civilly sued, as they might be overwhelmed with a multiplicity of suits; though if any one fell into the hole and broke his leg, he might bring a civil action for this special damage. It is with public or common nuisances alone that the Penal Code deals, and in accordance with the principles of English law, a person is under its provisions guilty of a public nuisance, who does "any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." Under the head of a public nuisance, as defined in the Code, would come all public or common nuisances at English law. Some of them indeed are specifically provided for by some of the Sections following the definition, and those not so mentioned will fall under the wide provisions of Section 290, which allows a fine not exceeding two hundred rupees for a public nuisance not otherwise punishable under the Code. Gaming, and other acts treated as nuisances under English law, and not individually mentioned in the Code, when carried on in such a way as to fall within the definition, will be punishable under this Section. Under the class of offences now considered, it will be observed that the sale of unwholesome food and some other acts not yet amenable to the English Criminal Code, though punishable under local Acts, have been made the subject of general criminal legislation in India.

This portion of the Penal Code at least, as far as it relates to those *illegal omissions* which will constitute a public nuisance, has as yet been little acted upon in the Mofussil, and we fancy some members of Ferry Funds and Municipalities would be a little astonished if prosecuted under the Penal Code for not repairing bridges and roads subject to their care. When public-spirited individuals *do* commence to set this part of the Code in motion, it may be found somewhat embarrassing to those charged with the practical management of these institutions.

Offences against External Security.—As explained by Bentham, “those which tend to expose the nation to the attacks of a “foreign enemy, such as every act which provokes or encourages “hostile invasion.” For this class of offences the English legislature has provided few or no sanctions. Persons have indeed been convicted for libelling foreign potentates, for instance, Lord George Gordon for libelling the Queen of France, and informations have been granted for libels upon Napoleon and upon the Emperor of Russia. In one case Lord Ellenborough held that the publication should be regarded as a libel in consequence of its having a *tendency to interrupt the amity and peace between the two countries*. Probably the definition of *defamation* in the Penal Code is wide enough to include a libel upon the Soobah of Nepal or the ruler of Bhotan, but we opine that a case of this sort would only fall indirectly within Bentham’s definition. The Code however provides for some offences which fall more directly within the class, *viz.* “waging war against any Asiatic power in alliance with the Queen,” “committing depredations on the territories of any power at peace with the Queen, and “receiving property taken by such war or depredation.”

Offences against Justice.—Of this class, the most important is ‘*perjury* ;’ an offence more prevalent in India than in any other country now enjoying the same freedom and civilization. Most justly has Mr. Norton in his work on Evidence remarked as follows:—“An oath, such at least as is ordinarily administered in “the Indian courts, appears to afford very little safeguard against “false swearing. Whether an oath taken in the temple or while “holding a cow’s tail is thought to require more strict observance “than other forms, it may be difficult to say, but the result of “experience certainly proves how very little restraint the common “oath of a law court imposes. Perhaps the most beneficial effect “of an oath upon an educated mind is to arouse the attention, to “excite caution, and secure accuracy of statement: it may terrify “or stupify the superstitious, but so far as the value of native “testimony is concerned, perhaps it is not too much to say that “evidence is as credible without as with the sanction of our “ordinary oath.” *Form-of-solemn-affirmation* would be a more correct term than *oath*. The English legislature in deference to the scruples of certain sects, who had conscientious objections to take an oath, and who believed themselves as much bound to state the truth on solemn affirmation, allowed a form of solemn affirmation to be substituted for an oath by members of these sect. The Indian legislature without, as it would seem, comprehending the object and scope of the English statutes, adopted the rule in India with respect to Hindoos and Mahomedans,

though their scruples to the form of the former oath could not be entertained as a serious objection to its use, and no one ever seriously pretended that they would consider the simple form of solemn affirmation equally binding on their consciences. The doctrine of the Roman Civil Law, approved and sanctioned by the case of *Omichund vs. Barker*, and subsequently confirmed by Statute* in England, is that all persons shall be bound by the oaths lawfully administered to them, provided they are administered in *such form and with such ceremonies as the parties sworn declare to be binding on their consciences*. Now the form of solemn affirmation administered in our Indian law courts without any ceremony whatever cannot be supposed to fall within the above exposition. It is in fact a mere solemn affirmation, not an oath. We have dispensed with the religious† sanction and retained only the moral sanction in a country where morality, as far as respects truth, is at a very low ebb indeed. The dread of punishment under the law has small influence in the case of men who are in many cases ignorant of the existence of such a law, who perhaps give evidence only once or twice in a life-time, and who, in a country, where nine-tenths of the population can neither read nor write, and nine hundred and ninety-nine out of a thousand never hear a newspaper read, and nineteen out of twenty newspapers give no reports of such matters, probably never heard of a man having been punished for telling a lie in a court of justice, and who would consider the probability of his being so punished too remote to be taken into account, while there is a considerable certainty of his suffering for it, if he refuse to give the required evidence for his zemindar. We speak of those who form the great majority of witnesses in the courts of the Mofussil. The small minority, who from education or practical acquaintance with the proceedings of the courts are aware of the consequences of perjury, *if proved*, will have a due respect for the terrors of the law, and will be considerably

* 1 & 2 Vict. Cap. 105.

† On this point Taylor says,—“It must be admitted, that by thus laying hold of the conscience of the witness (*i.e.* by calling his attention to the Supreme Being as a dispenser of rewards and punishments here or hereafter) the law best insures the utterance of truth.” Vol. II. p. 1176. “We find by experience,” says Archbishop Tucker, “that many will boldly say what they will by no means adventure to swear.” We saw a case mentioned in a Calcutta newspaper in which a Mahomedan witness in a case of culpable homicide, wishing to screen a relation of his landlord, on solemn affirmation denied that the man was present at the murder; but when sworn on the *Koran*, he admitted what he had before denied point-blank.

influenced by the risk of detection and the chances of escape. The character of the *hakim* for sharpness and discernment will also have considerable influence on their calculations. In making these remarks, the truth of which must be recognized by those who have had sufficient experience to be competent judges of the matter, we at the same time desire to express our conviction, that there are natives who from education or other reasons have as great a respect for truth as some Europeans. We are happy to be able to say we have met some such. In and about the Presidency Towns and other large centres of civilization, the number of those who shun perjury from adherence to truth (the result of morality or habit) or from fear of punishment, is much greater than in the Mofussil, and for very obvious reasons. Education and the example of respectable Europeans have induced a different habit, and the fear of punishment is better diffused abroad. The lower classes are moreover more independent and less under the authority of petty chiefs, who, notwithstanding all our enfranchising enactments, enjoy very great authority over their dependents, who look upon giving evidence for their masters (*muneefs*) somewhat in the light that the holder of a fee regarded fighting against his lord's enemies, paying his share towards his lord's ransom, or contributing to the portion of his eldest daughter. In order to suppress perjury in the Mofussil, we would recommend that the Sections of the Penal Code relating to this offence be hung up in a conspicuous place in every court, civil and criminal, and that whenever any one was convicted for perjury, his conviction be posted in every court in the district, in the same way that convictions for railway offences are posted at every station along the line. In glaring cases his shame might also be proclaimed with beat of drum in his own village. These sanctions depend upon principles advocated by Bentham, but which modern legislatures have as yet been slow to follow.

According to Roscoe, in order to support an indictment for perjury under English law, the prosecutor must prove—*1st*, the authority to administer an oath; *2nd*, the occasion of administering it; *3rd*, the taking of the oath; *4th*, the substance of the oath; *5th*, the materiality of the matter sworn; *6th*, the introductory averments; *7th*, the falsity of the matter sworn; and *8th*, the corrupt intention of the defendant. With respect to the first four points, we may remark that the offence of '*giving false evidence*' under the Penal Code can be committed not only by a person *legally bound by an oath*, but also by a person bound by any express provision of law to state the truth, or bound by law to make a declaration upon any subject. An oath or solemn

affirmation is therefore not an essential attribute of the act which constitutes the Indian offence. With reference to the fifth point, the materiality of the matter sworn is no longer of importance. If the defendant have made *any statement* which is false, and which he either knew or believed to be false or did not believe to be true, the offence will have been complete. The definition of the Penal Code thus includes the two great branches of perjury in English law, *viz.* perjury at common law, and perjury by statute. In respect of the punishment allotted to the different species of perjury, the Code is a great improvement on English law under which the utmost punishment that can be inflicted is four years' penal servitude, though the perjury be, as Mr. Stephen observes, the instrument of the foulest kinds of murder and robbery, or the means of inflicting loss of liberty, character and property in any degree.

One more point only we have time to notice under the present class of offences. Under English law, if a man be indicted for breaking prison, and be subsequently acquitted of the felony for which he was detained in prison, he can plead this acquittal in bar of the indictment for prison breach. He could not do so under Indian law.

Offences against the Police.—These may be divided into those committed by members of the Police, which are in a great measure provided for by Act V of 1861, and those committed by outsiders, which are provided for by many useful Sections of the Penal Code. As we shall see in a future article, the Police in this country have greater power than the Police at home, and are subjected to criminal punishment for *non-feasance* of duty in cases where the Police in England could only be dismissed from their posts. We shall at present merely advert to Section 119 of the Penal Code, which punishes severely a public servant who conceals his knowledge of the existence of a design to commit an offence.

Offences against the Public Force.—Under this head come offences relating to the army and navy committed by persons who are not members of those services, and therefore not amenable to Martial Law. The provisions of this chapter of the Penal Code have been borrowed with some few additions from the 57 Geo. III, cap. 7, and will be found a useful supplement to the Indian Mutiny Act. We may remark that the English Mutiny Act, which is annually passed at home, and by which Parliament annually asserts its authority in respect of the standing army of the kingdom, makes it a misdemeanour for any person in any part of Her Majesty's dominions, directly or indirectly, to persuade any soldier to desert.

Offences against the Public Treasure.—Under this head will come that chapter of the Indian Penal Code which treats of offences relating to coin and government stamps. It is clear that all Excise and Customs Acts would belong to the same class. The special Acts relating to opium, abkaree, salt and stamps, in so far as they inflict penalties for infringements of their provisions, fall under the same head. They have not however been included in the permanent Code, as they are liable to be changed with the systems of finance which, from time to time, are deemed politic or otherwise by the Government for the time being. The offences relating to coining in the Penal Code are in all material points the same as in English law, which anciently classed this crime under the head of treason, the right to coin money being one of the prerogatives of sovereignty.

Offences against Population.—The second portion of the sixteenth chapter of the Penal Code treats 'of the causing of miscarriage, of injuries to unborn children, of the exposure of infants, and of the concealment of births.' The recent case of *Charlotte Winsor* at home has again brought a much controverted portion of this subject before the public. Bentham argues that homicide committed on the person of a new-born infant *with the consent* of its parents, ought not to be punished as a principal offence, because the act occasions no alarm to others. He would punish it as an introduction to crimes, and as furnishing a proof against the character of those who commit it. He objects to the treatment of this particular crime by modern legislatures. "Compare," he says, "the offence with the punishment. The offence is what is improperly called the death of an infant, who has ceased to be before knowing what existence is,—a result of a nature not to give the slightest inquietude to the most timid imagination; and which can cause no regrets but to the very person who, through a sentiment of shame and pity, has refused to prolong a life begun under the auspices of misery. And what is the punishment?—the barbarous infliction of an ignominious death upon an unhappy mother, whose very offence proves her excessive sensibility; upon a woman guided by despair, who in hardening her heart against the softest instinct of nature, has harmed no one but herself. She is devoted to infamy, because she has dreaded shame too much, and the souls of her surviving friends are poisoned with grief and disgrace." It must be remembered that, owing to Bentham's incapability of writing good English, the results of his labours appeared in French, and that the above is but a translation. His friend Dumont is perhaps responsible for portions of his language.

Bentham's Code is not distinguished by severity against the fair sex, and the fact of a man of his discernment having formed so very favourable an opinion of the class, speaks strongly for the purity of his morals, as showing that he associated only with women of goodness and purity. His acquaintance with such as Charlotte Winsor and those who availed themselves of her services must have been small indeed. There are, no doubt, cases "where lovely woman stoops to folly, and finds too late that men betray," which should be regarded from Bentham's point of view, but is not the *excessive sensibility* he speaks of, even in most of these, *excessive selfishness*, which leads the erring one to prefer the opinion of the world to the opinion of her God, and to sacrifice a hapless innocent, for whose auspices of misery she alone is responsible, to a desire to secure her own reputation at all hazards, which too often defeats itself, and in ninety-nine cases out of a hundred is frustrated by the whisperings of busy rumour. The subject however is one upon which widely different opinions have been held by the highest authorities, and we must remember that when Bentham wrote, the Act of 21 J. I. cap. 27, (borrowed no doubt, as Mr. Taylor remarks, Vol. 1, p. 125, from a similar edict of H. 2 of France cited by Domat) was in force, according to which, if the mother of an illegitimate child endeavoured privately by secret burying or by any other way to conceal its death, *she was presumed to have murdered it*, unless she could prove by one witness at the least that the child was born dead. Where the child *was* born dead, and there was no crime but only a desire to hide shame, the mother could have been and often was punished capitally. This barbarous law has since been repealed both in England and America, but there is no doubt that the just compassion raised by its operation contributed, according to the usual rule, to the sentiments of those who ran into an opposite extreme.

With respect to the abandoning or exposing of children, it has been settled under English law that abandonment alone without proof that the child's health was thereby injured is not sufficient to constitute an offence, but under the Penal Code, whoever being the father or mother of a child *under the age of twelve years*, or having the care of such child, shall expose or leave it *in any place* with the intention of wholly abandoning it, shall be liable to imprisonment for seven years or fine or both.

One point more we shall notice under this head. At English law, a child must be actually wholly in the world, in a living state, to be the subject of a charge of murder. But under the

Code, it may amount to "culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."

Offences against the National Wealth.—Under this head come "offences relating to weighing and measuring," and "offences relating to documents and to trade or property marks." Under English law the use of false weights or measures or trade marks does not of itself constitute an offence, but *cheating* by such use does, and is a misdemeanour punishable at common law. The Penal Code however makes the use of such false scales, weight, measure or mark to constitute the offence.

'Forgery' is by some jurists classed under the head of 'offences against property,' but the framers of the Penal Code have placed it under a separate head, no doubt following Bentham's classification. The definition of forgery in the Code follows the English in preference to the Scotch law. Blackstone defines the offence as "*the fraudulent making or alteration of a writing to the prejudice of another's right.*" Mr. East as "*a false making, "a making malo animo, of any written instrument"* for the purpose of fraud and deceit. It must be shown that an intent to defraud existed at the time of making or altering the writing. It need not be proved that there was an intent to defraud any particular person. An intent to defraud generally will be sufficient. The definition of the Code unites the sense of the above two definitions, and is as follows:—"Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery." The existence of the intent at the time of making the document, as under English law, constitutes the offence, even though the document be never used or uttered, which using or uttering would under the Code amount to a second offence. Under Scotch law there is no crime committed till the forged document have been uttered or put to use. The Indian definition goes beyond even English law, as will at once appear if the meaning of the terms "*injury*" and "*document*," as defined in the Code, be borne in mind. We leave the curious reader to discover results for himself. In concluding our very brief notice of the subject of forgery, we may remark that the Code has a great advantage over English law in respect of brevity, inasmuch as it includes in fifteen sections what is spread over no less than fifty-six in the English statute.

Offences against the Sovereignty.—If we were discussing the political tendencies of the nineteenth century, we might remark,

as a proof of the democratic character of the Penal Code, that it treats this class of offences as committed not against the *Sovereign*, but against the *State* and against the *Public Tranquillity*. Under the Statute of Treasons (25 Ed. III, Stat. 5, c. 2) "when a man doth compass or imagine the death of our lord the king or of our lady his queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir;* or if a man do levy war against our lord the king in his "realm, or be adherent to the King's enemies in his realm, giving "to them aid and comfort in the realm or elsewhere," he is guilty of treason; and under the 36 George III, cap. 7, "who- "ever within the realm or without shall compass, imagine, invent, "devise or intend death or destruction or any bodily harm "tending to death or destruction, maim or wounding, imprison- "ment or restraint," of the heirs and successors of George III, and "such compassings, imaginations, inventions, devices or "intentions, or any of them shall express, utter or declare by "publishing any printing or writing, or by any overt act or "deed," is guilty of treason. It was formerly treason to compass, imagine, &c., to deprive, or depose the King or Queen from their style, honour, or royal name, or to levy war within any part of the United Kingdom, in order by force or constraint to compel them to change their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe either House of Parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom or any other of Her Majesty's dominions or countries under the obeisance of Her Majesty, but these acts are not now treason, though they are *felony* under the 11 and 12 Vict. cap. 12, under which statute most of the recent Fenian convictions in Ireland took place. The Indian Penal Code, as it takes no cognizance of "felonies" and "misdemeanours," so is silent as to "treason." It provides however for the offences of "waging, "or attempting to wage war, or abetting the waging of war "against the Queen;" "collecting men, arms or ammunition "or otherwise preparing to wage war;" "concealing with

* The Indian Code provides for no offences analogous to these, which with slaying the chancellor, or treasurer, or the judges being in their places doing their offices, Mr Stephen terms "antiquarian curiosities." The same might be said of the Statute of Henry VIII, which imposed the penalty of treason upon any one who, not being a true maid, married the king without disclosing her incontinency, and which so frightened all the spinsters at Henry's court, that they fought shy of His Majesty, who had in consequence to take a widow (Catherine Parr) for his sixth and last wife.

"intent to facilitate a design to wage war;" "assaulting or "wrongfully restraining, or attempting wrongfully to restrain, "or overawing or attempting to overawe by means of criminal "force or the show of criminal force, the Governor-General "of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a member of the Council of the Governor-General, or of the Council of any Presidency, with the "intention of inducing or compelling any of them to exercise or refrain from exercising in any manner any of their "lawful powers." The code does not provide for offences committed against the person of the Sovereign or of the Heir to the Crown. If they visited India at any time, we should require a supplementary enactment.

Under English law, the levying war which constitutes treason is of two kinds, viz. *direct* and *constructive*. The former is clear enough, but as there is more difficulty as to what constitutes the latter, some explanation is necessary. There is a constructive levying of war, where there is a purpose to effect innovations of a public and general nature by an armed force, as to obtain the repeal of a statute, to alter the religion established by law, to obtain the redress of any public grievance, real or pretended. Those taking part in an insurrection for the purpose of pulling down *all* enclosures, opening *all* prisons, expelling *all* strangers, or raising the rate of *all* wages, will be guilty of treason. We do not think that "waging war" in the code will receive an interpretation so wide as that put upon "levying war" in the English statutes, but it is clear that acts not amounting to the higher offence will yet be punishable as offences against the public tranquillity. An assembly of five or more persons is an "unlawful assembly," if the common object of the persons composing it be—*first*, to overawe by criminal force, or show of criminal force the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor or any public servant in the exercise of the lawful power of such public servant; or, *secondly*, to resist the execution of any law, &c. It is almost to be regretted that the Commissioners did not give a definition of "waging war." As the Code now stands on this point, there is considerable scope for the tribunals to exercise a large discretion in construing certain acts to amount to a very high offence or to constitute a very small one. There is no law of limitation in India for prosecutions for offences similar to that which constitutes treason at home. The period of limitation for these prosecutions in England is three years, unless where the treason is directed against the *person* of the sovereign.

An assembly of five or more persons is also an unlawful assembly, if the common object be "by means of criminal force, " or show of criminal force to any person, to take or obtain possession of any property or to deprive any person of the enjoyment " of a right of way or of the use of water or other incorporeal right " of which he is in possession or enjoyment, or to enforce any " right or supposed right." It makes no matter whether the right be a *bond fide* one or not. It cannot be enforced by violence, and the party seeking to enforce it should resort to the constituted tribunals. This is in accordance with the principles of English law. It will be observed that no offence is committed by those who resort to criminal force to *keep* possession of property, or to *resist* the violent enforcement of a right. So in England, where a weir had been erected across a common navigable river, and a number of persons assembled with spades and other necessary implements and removed it, this was held to be neither a forcible entry nor a riot. We may here observe that there is no regular "Riot Act" in India, rendering those who refuse to disperse, when called on to do so, guilty of felony. There is however a somewhat similar provision. Section 111 of the Code of Criminal Procedure runs as follows :—"A Magistrate or Officer in charge of a Police " station may command an *unlawful assembly* to disperse, and it " shall thereupon be the duty of the members of such *unlawful " assembly* to disperse accordingly." Remaining in an unlawful assembly after an order to disperse, subjects the offender under Section 145 of the Penal Code to as much as *four times* the punishment of being merely a member of such assembly. Section 151 of the Penal Code provides for persons continuing in any assembly (though not an unlawful one) of five or more persons after an order has been given to disperse. Who is competent to give such an order, the law saith not, as the above quoted Section of the Criminal Procedure Code only refers to an "unlawful assembly." In order to bring the English Riot Act into operation, there must be *twelve* persons unlawfully assembled.

Offences against Religion.—The Sections of the Code relating to this subject require but a brief notice. They at first gave rise to apprehensions, which five years' experience of the working of the law has not however tended to realize. Disturbing any meeting, assembly or congregation of persons assembled for religious worship is an indictable offence under English law, which also protects churches and chapels and grave-yards by several enactments. With respect to the other acts provided for, there is no offence where there is no deliberate intention to wound or insult

the religious feelings of others. Malicious revilings in public, derogation and contempt of the *established religion* are punishable in England at common law, which has more power in these matters than most people are aware, and certainly it is to the credit of British tolerance and enlightenment that she extends to the religion of others the same protection afforded to the established religion of those islands, where true religious toleration first was known.

ART. VI—1. *Asiatic Researches.*

2. *Journal of the Asiatic Society of Bengal.*

3. *Act XVII of 1866 of the Legislative Council.*

AT length after the hopes and disappointments of the last ten years, the project of an Imperial Museum for India is about to be realized. The difficulties which stood in the way have disappeared. Our rulers have accepted the position that a civilized state is bound to advance the cause of science. The pressure which for so many years has lain on our public finances, and curbed so many plans of public utility, has now, by wise economy and careful management, been so far relieved as to allow some little licence in the disposal of a surplus revenue. The Indian Museum has at last been founded, and Government has bound itself by law to erect a suitable building within five years from March 1866, and the Judges of the Court of Small Causes may already hear the departmental hammer and chisel in their immediate vicinity.

It may not be out of place therefore on the present occasion to review the various steps that have been taken from time to time towards this desirable object, and to anticipate, so far as we may be able, the special advantages which may fairly be expected to accrue from the proposed institution to the interests of science and education in general.

The Indian Museum is the result of a movement set on foot so far back as 1856 by the Asiatic Society of Bengal, and had that Society done nothing else to promote science during the last ten years, it would have entitled itself to the gratitude of posterity for the vigour with which it has prosecuted to success a project fraught with so much public usefulness. But it is not merely in having advocated the cause of the Museum, that that scientific body has conferred an obligation on the Indian public; it has further backed its proposals with more substantial offers, and has transferred its own collections to form the nucleus of the new institution. It is owing to the labours and researches of the Society for upwards of half a century, that the Indian Museum is able to commence its existence with a collection that would do credit to many a similar institution in Europe. It would be impossible therefore, in treating our present subject, to overlook the position occupied by the Asiatic Society, or omit to give some brief account of its labours in the field of natural science.

The Asiatic Society of Bengal was founded on the 15th January 1784, by the illustrious lawyer, linguist, and naturalist, Sir William Jones. The Governor-General, Warren Hastings, having declined the offer of the chair, the founder of the Society was elected its President, an office which he continued to fill with eminent ability and success for upwards of ten years. The aims and aspirations of the infant Society were humble enough. Weekly evening meetings (and very sociable meetings they must have been) were held in the Grand Jury Room, for the perusal and discussion of original papers on the history, antiquities, arts, science and literature of Asia, and a selection of these papers was from time to time published as the *Asiatic Researches*. The inaugural address was delivered by the President on 15th February 1784, and was succeeded by a similar discourse on each anniversary of the founding of the Society. Eleven of these discourses were delivered by Sir William Jones, and though related as it were to a former era of science, in which however they must have been regarded as monuments of learning far in advance of the age, they may still be read with interest and profit at the present day. The practice however of delivering an anniversary address apparently fell into desuetude after the death of Sir William Jones,* and no attempt has since been made to revive what seems to us a most valuable and praiseworthy custom. It is true that in the proceedings of 1828 we have met with a resolution "that the members should, after the practice of the "Fellows of the Royal Society, dine together on the anniversary "of the institution of the Society;" but as no record of the after-dinner speeches has been handed down, it must be presumed that they were not considered worthy of being preserved. An annual address no doubt is valuable in giving an impulse to the cause of science, and we take this opportunity of recommending the Society to resuscitate it in some form or other.

The earliest labours of the Society were chiefly literary, and unambitious as appeared the prospectus sketched out by its illustrious founder, there was one point in which it was soon found impossible to carry it out in its integrity. The meetings which at first had been weekly, were now held monthly, and in July 1800 we find that a resolution was carried to the effect that the objects of the Society would be fully met by meetings once a quarter!

But a new prophet was now to arise in Israel. Henry Thomas Colebrooke, a man whose Indian researches and Indian fame cannot even be eclipsed by his subsequent achievements as founder of the Royal Asiatic Society of Great Britain and Ireland,

* 27th April, 1794.

was elected President in 1806, and again the Society exhibited symptoms of life and youthful vigour. In that year the project was formed of the "*Bibliotheca Asiatica*, or a descriptive catalogue of Asiatic books, with extracts and translations,"—* a publication which on a somewhat different plan and aided by the subsequent grant of Rs. 500 per mensem accorded by the Court of Directors in 1839, is now swelling to such vast and valuable proportions. Two years later, subscriptions were raised to the amount of Rs. 24,000, with which the Society's present house was erected, the site having been granted by Government in 1805.

A fresh impulse was communicated to the Society's researches by the establishment of Scientific and Literary Committees, the former of which "might propose such plans and carry on such "correspondence as might seem best suited to promote the knowledge of natural history, philosophy, medicine, improvements of "the arts, and whatever is comprehended in the general term of "physics," while the latter directed its labours more particularly towards "literature, philology, history and antiquities." The Committees were to meet on alternate Wednesdays, and meetings, we are informed, † were held for some little time, but as zeal wore out, were discontinued. Indeed it was no more than to be expected that with the vast field of Sanscrit literature opening before them, only requiring to be explored to yield a certain mine of wealth, Orientalists of that day should have preferred the new and interesting paths of literature to science. It is not to be wondered that at a time when these eminent scholars were introducing to the notice of European *savans* a literature which was to work a thorough change in the then current notion of language altogether, they should have regarded it as "that "department which must on every account claim precedence "among the subjects of this Society's research."‡

But an era of scientific investigation was about to dawn. So far back as February 1814 the Society had determined on

* On 2nd July 1806 it was resolved.—"That the Society publish from "time to time as their funds will admit of it, in volumes distinct from the '*Asiatic Researches*, translations of short works in the Sanscrit and other "Asiatic languages, or extracts and descriptive accounts of books of greater "length in those languages which may be offered to the Society, and appear "deserving of publication." The *Bibliotheca Asiatica* did not, so far as we are aware, ever reach the point of publication; but this was the origin of the project which subsequently in pursuance of Mr. Laidlay's Minute of 1847 was realised in the publication of the *Bibliotheca Indica*.

† Introduction to *Asiat. Res.* Vol. XVIII.

‡ Address to Prof. H. H. Wilson on his resignation of the post of Secretary. *Asiat. Res.* Vol. XVII. App.

the formation of a Museum "for the reception of all articles that "may tend to illustrate Oriental manners and history, or to elucidate the peculiarities of nature or art in the East."* And now on the 2nd January 1828 the defunct Committee of Natural History and Physics was raked out from the musty records where it had lain for nearly twenty years, and reorganized for the purposes of scientific research. †

For at this time two master spirits had appeared upon the scene. Professor H. H. Wilson, who in the field of Oriental literature established for himself a reputation which few have attained or can even hope to attain, was nobly seconded in the sister pursuits of physical science by his assistant and successor in the Calcutta Mint, James Prinsep. This latter gentleman, on being deputed shortly after his arrival in the country to the charge of the mint at Benares, not only prosecuted his favourite studies with zeal in that city, but succeeded in imparting some of his own ardour to others, and established a corresponding Society. ‡ On the abolition of the mint at Benares in 1830, he returned to Calcutta, where he was immediately elected joint Secretary with Professor Wilson, with particular reference to the Physical Class. He did not assume his duties one moment too soon, for the extraordinary discoveries of that epoch had already commenced, and another mind had already conceived and was carrying into execution the noble design, which Prinsep afterwards brought to perfection.

* Contributions were invited under the following seventeen heads :—

1. Inscriptions on stone or brass.
2. Ancient monuments, Muhamedan or Hindu.
3. Figures of the Hindu deities.
4. Ancient coins.
5. Ancient manuscripts.
6. Instruments of war peculiar to the East.
7. Instruments of music peculiar to the East.
8. The vessels employed in religious ceremonies.
9. Implements of native art and manufacture.
10. Animals peculiar to India, dried or preserved.
11. Skeletons or particular bones of animals peculiar to India.
12. Birds peculiar to India, stuffed or preserved.
13. Dried plants, fruits, &c.
14. Mineral or vegetable preparations in Eastern pharmacy.
15. Ores of metals.
16. Native alloys of metals.
17. Minerals of every description.

† "Resolved that the Physical Committee of the Asiatic Society be considered as in existence, and for the same purposes as formerly, exclusive of medicine." Physics were defined to include the "Zoology, Meteorology, Mineralogy, and Geology of Hindustan."

‡ *Vide* Extracts from Proceedings. Asiat. Res. Vol. XV. App.

We must pause here a moment to cast a retrospective glance at the literary results of earlier years. It had been the intention of Sir William Jones, if sufficient materials had been contributed, that a volume of the *Researches* should be published annually. But up to the time of his death three volumes only had seen the light, and sixteen only had been published now after the lapse of forty-five years. These sixteen volumes moreover were purely literary, little or nothing having hitherto been done for the cultivation of natural history or physical science. But now when these branches of knowledge were daily forcing themselves upon the attention of the Society, some measures of reform were felt to be necessary, that the germs of scientific research in India might not be blighted in the bud. One of these measures we have already noticed in the reorganization of the Physical Class. Another was the division of the *Researches* into two distinct parts, Literary and Scientific. But this was not enough. It was justly felt that the spirit of science, which had now been fairly roused, required some more frequent medium of communication than was afforded by the *Researches*. It was not in the nature of things that valuable discoveries, such as were now being made almost daily, should be allowed to remain shut up in the Secretary's box for four years before being published to the world. The times demanded a quicker interchange of thought. Scientific men called for a more frequent, if more ephemeral publication, wherein to announce their discoveries and compare notes.

Accordingly in 1829 Captain Herbert on his own responsibility commenced the publication of a monthly periodical entitled "*Gleanings in Science*," chiefly intended to contain extracts from European scientific literature, with such original papers as might be forthcoming. The project was thoroughly successful, and original communications poured in from all sides. On his return to Calcutta, James Prinsep succeeded Captain Herbert as editor, and on the 7th March 1832 procured the Society's consent to its being designated from that year and so long as it should continue to be edited by their Secretary by the title of the "*Journal of the Asiatic Society of Bengal*." At the same time it remained the editor's property, and otherwise independent of the Society and of its *Researches*, four volumes of which appeared subsequent to this date. Owing to the profusion of materials, there was no longer any necessity to reprint extracts from other periodicals, the original contributions alone swelling the *Journal* to double its original size. At length, having raised the work to a first-class reputation throughout the world, James Prinsep on his return to Europe in 1838 transferred the *Journal* with a circulation

of upwards of 500 names to his successor Henry Torrens, on whose resignation in 1843 it was finally adopted by the Society as its own publication, and thenceforth took the place of the *Researches*.

It may not unnaturally be supposed that, at a time when physical science was so largely engrossing the attention of the Secretary and other members of the Society, anxious thoughts were from time to time directed towards the Museum. Established as we have said in 1814, it had been well supported from the first,* and the receipt of numerous and valuable donations had by this time rendered it an interesting and important institution. In fact the Museum had now attained such proportions that not only was additional space required for the proper display of the various specimens, but the services of a Curator were found to be indispensable for the due preservation of the collections committed to the Society's trust. Accordingly, in 1835 the society appointed a paid Curator on Rs. 150 per mensem, an arrangement however which from want of the requisite funds lasted only two years. In 1837 the matter was referred to the consideration of the Committee of Papers, who recommended that an application should be made to Government for an annual grant of Rs. 10,000. It was in this application, forwarded by Sir Edward Ryan in June of that same year, that the idea of a National Museum for India was first broached,†—

* "The Museum indeed may be regarded as of your Lordship's creation, " dating from the period of your Presidency, and having grown up under " your care." Address to the Marquis of Hastings, 26th December 1822. *As. Res. Vol. XV. App.*

† "The Asiatic Society, or it may be allowable to say the metropolis of " British India, has had the germs of a National Museum as it were planted " in its bosom. As at Paris a new era was opened in the history of its great " museum, the Jardin des Plantes, through the discoveries of extinct and " wondrous animal forms exhumed from the rocks on which the town was " built, and which required all the adjuncts of comparative anatomy for their " investigation even by the master-hand of the great Cuvier; so in Calcutta " through the munificence of a few individuals, and the development of " fossil deposits in various parts of India hitherto unsuspected, we have " become possessed of the basis of a grand collection, and we have been " driven to seek recent specimens to elucidate them. Our desire has been " warmly seconded by all who have enjoyed the opportunity of contributing; " from China, from New South Wales, from the Cape, and from every quarter " of the Honorable Company's possessions, specimens of natural history, " mineralogy, and geology have flowed in faster than they could be accom- " modated, and the too little attention they have received has alone prevented " similar presentations from being much more numerous, for it is but reason- " able to suppose that of the stores continually despatched to England or the " Continent, the Society would have received a larger share, had it done proper " honour to what it has received." Extract from the Society's application for Government-aid, dated 15th June 1837, and published in the Proceedings for that month.

it having been clearly proved by the experience of previous years that no collection worthy of this country could be maintained either by private means, or even at the expense of a single society. The reply of the Government of India was perhaps as favourable as could have been expected. The Society's application was forwarded to the Court of Directors with strong recommendations of adoption, but the project being a novel one, and there being some doubt at that day of the practicability of preserving a zoological collection in the climate of Bengal, while the Court had a very good Museum of their own in Leadenhall Street in London, the Indian Government refused to take upon itself the responsibility of sanctioning the proposal. On a further representation from the Society, the Governor-General in Council authorized a monthly grant of Rs. 200 for the Museum, at the same time holding out the promise of special additional grants for specific objects, such as the purchase of collections. Two years later however, when the value of this latter promise was put to the test, the Government on the plea of the injurious effects of the climate refused to purchase Major W. E. Hay's zoological collection made in Africa, South America, and the Eastern Archipelago, and valued at Rs. 30,000.

In their Despatch dated the 18th September 1839, the Court of Directors approved of the proceedings of the Government of India, and recognized its duty towards science to some extent in these words. "The independent and useful activity of the Asiatic Society of Bengal, during so long a period, entitles it justly to your consideration, and looking to it as the only institution in India which offers any analogy to the great national libraries and museums of Europe, it is a legitimate object of public support." The relation in which the Society was placed towards the Company's Museum in consideration of this grant was to some extent defined in a subsequent Despatch, in which the Honourable Court with some reason complained of the supposed detention by the Society of the valuable collections made by Dr. Helfer and Captain Pemberton at the expense of Government, and the principle was then laid down that the Society's Museum in Calcutta, so far as the Government was concerned, should only be regarded as subordinate and accessory to the Company's Museum in London. The most full and complete series of all collections thereafter to be made on behalf of Government should, it was ordered, be despatched without delay to England, duplicate specimens only, if available, being retained in the Society's Museum.*

* "By the plan thus recommended," write the Court, "we shall become acquainted with the zoological productions of regions newly visited and

The numerous reports that were written about this time on the subject of the Society's Museum, exhibit a state of chaotic disorder, which was only to be expected so long as the Society was without a paid Curator. Much however was effected by the extension of the Society's premises and the erection of additional rooms. A subscription list was opened for the preparation of cases and cabinets, and the arrival of Mr. Blyth as Curator at the end of 1841 promised more satisfactory arrangements for the future.

But it is necessary now that we should turn to another department of science, which was beginning to attract attention at home no less than in this country. The valuable reports of Drs. Royle and M'Clelland had not been shelved as so much waste paper. On the contrary, they had proved to the Court of Directors that much might be done by the aid of scientific enquiry towards developing the resources of their vast possessions in the East. Already the Honourable Company had founded on the most munificent scale Botanic Gardens at Calcutta and Seharunpore, the successive Superintendents of which, *e.g.* Roxburgh, Wallich, Falconer and Thomson, have ranked among the names dearest to science in India. As far back as 1830 Captain Herbert had been deputed on the part of Government to make a geological and mineralogical survey of the W. Himalaya, a scheme which was unfortunately but partially achieved at the time of that officer's death in 1833. And now it was determined to found in Calcutta a "Museum of Economic Geology of India," by the aid of which, it was expected, important discoveries would be made relative to the mining and agricultural wealth of the country. In January 1841, Captain Trevenheere arrived in charge of the nucleus of the proposed Museum, comprising specimens of coal and ores from England. They were deposited in the Society's house, which indeed at that time was the only place in India fit for their reception, and the Society with admirable *sans froid* appropriated the collection by a resolution passed in April of the same year. It was understood that this Museum was "not intended for the reception of specimens of rocks or fossils to illustrate points of theoretical geology, but to exhibit those substances occurring occasionally in the solid crust of the earth, and others which are applicable

thus obtain materials for "Local Faunas" of which several instructive series already exist in our Museum. Of all entomological collections we require that the entire result of any deputation on behalf of Government be forwarded to our Museum, since these cannot be preserved in India under the disadvantage of imperfect cabinets, moisture, and general destructive effects of the climate; and being comprised in smaller space, their transmission is not expensive."

“ to the useful purposes of life.” But the Society took up the project with warm interest, issued a circular on the subject, and solicited aid from its numerous members. On its representation, Mr. H. Piddington was appointed in the following year joint Curator to the Museum of Economic Geology on a salary of Rs. 250 per mensem, and a further grant of Rs. 64 per mensem for contingencies was subsequently made by the Government. The Museum remained and grew in the Society’s custody for fifteen years. At length in July 1856, the Government resolved to remove it and to establish an independent Geological Museum, theoretical as well as practical, in connection with the Geological Survey. At the same time the Society was requested both by Government and the Superintendent of the Geological Survey to transfer its own geological and palæontological collections to the new Museum. After considerable discussion the proposal was rejected by a majority of one—on the grounds, according to the Council’s report, that “ such a transfer, if made, would be irreparable, that “ it would be inconsistent with the terms on which those “ collections have been acquired by, or presented to, the “ Society, and would be likely to injure irretrievably the “ future prospects of the Society.” We will not stay to consider how far these grounds, however specious, were strictly tenable, or why they were not as imperative in 1865 as in 1856. Possibly the real reason lurked behind and was but faintly expressed in the Minutes of the Council. The proposal was felt to be a half-measure only. It did not go far enough to meet with the cordial approval of the Society. Already had the project been mooted of an Imperial Museum of Science in all its branches, and it was no doubt felt that the present proposal, if acceded to, would only further delay the accomplishment of that project in its entirety. It was indeed ably argued by some of the members that by transferring to Government its geological collections, the Society would establish a claim to additional Government-aid towards its Natural History Museum,* but the

* The following extract from the Minute of Mr. Atkinson, then Secretary to the Society, is worthy of insertion here:—“ It may be considered “ certain, moreover, that the Society’s private resources will never be sufficient to maintain a general museum in efficiency. No private society that I “ am aware of has ever been able to do this on a large scale, and even societies “ whose operations are confined to a single branch of science have constantly “ been obliged to relinquish their collections from finding them out-growing “ the means at their disposal (*e.g.* the Geological Society of Dublin and the “ Zoological Society of London.) At the same time a good museum is to the “ naturalist second only in importance to a good library, I agree with Dr. “ Thomson that the society are trustees for science rather than for the donors

majority of the Council were apparently not content to entrust the matter to the possible liberality of the Indian Government. For our own part we think they were right. The separation of the Society's collections would undoubtedly have had the effect of postponing the question of a National Museum. The Government would have considered that it was sufficiently performing its part in the custody and preservation of the geological specimens, and it would probably have also used the argument that the space vacated by that collection might be advantageously utilized in the extension and re-arrangement of the Zoological Museum.

The question of a National Museum, we have said, had already been agitated in the Society. Early in the same year a special Committee had been appointed to consider the propriety of reducing the rates of subscription, and in representing such a reduction as impracticable, the Committee brought to notice the requirements of the Museum, and urged upon the Society the necessity "of drawing the attention of Government to the importance of establishing a public Museum on a more extended scale than it is possible for any private body to maintain." Accordingly, in the following year the question was referred to the consideration of the Natural History Committee, and in consequence of their report,* it was resolved

"of collections, and as such I think the great question they have now to consider is, how a good museum may be best obtained. We have now an opening for asking and obtaining more from Government than we are ever likely to be in a position to do again. I would acknowledge with gratitude the desire which Government have evinced to promote science 'for its own sake' in one of its branches at least, and whilst acceding heartily to its proposal to take into its own hands the charge and maintenance of our geological collections, I would at the same time press upon them the corresponding claims of science in its other branches, and ask them, if they are not at present prepared to found and maintain a general museum themselves as they have already done in Madras and Bombay, to grant us a considerable increase in their monthly subsidy of Rs. 300, which, though a liberal allowance towards the support of our Museum in its infancy, is very inadequate to meet the necessities of its present stage of growth. This I think we might fairly ask, if we meet the wishes of Government now. If we refuse, I do not see that we shall ever again be able to urge the like request. Should we succeed in obtaining this increased aid, with a prospect of further increase from time to time as the demands of our collections expand with their growth, our museum might become of great and increasing value to science. Without this, I see no prospect for it but starvation and decay."

* The Society, in advancing its claim to be heard, thus recounts its own services:—"In the face of many difficulties, the Asiatic Society has, it is believed, continued to advance the cause of knowledge from the days of its illustrious founder to the present time. Large and important collections have been brought together and preserved by its means; and an unbroken series of publications has been maintained in its *Researches* and *Journal*

"that the Council be empowered to enter into a communication with the Government on the subject of the foundation at Calcutta of an Imperial Museum, to which the whole of the Society's collections, except the library, may be transferred, provided the locality, the general arrangement and management be declared, on a reference to the Society at large, to be perfectly satisfactory to its members." The terrible events of the mutiny however, which proved fatal to so many good and useful projects, necessitated a further delay; and it was not till the 8th October 1858, that the Society's Secretary addressed the Government on the subject.*

"which may generally bear a favourable comparison with the records of the learned societies of Europe, and among the pages of which may be found many most valuable contributions to literature and science."

* The following extracts from the Committee's report are not without interest: "The zoological collections are very extensive and valuable; they have been found on the whole in a fair state of preservation, though they have certainly not received that amount of care of which they are deserving. The Society's collection of Indian birds is believed to be the largest and most complete of any that exists in any museum in the world, and the series of quadrupeds is very rich. The Committee would here beg to bring prominently to notice, as a result of their present investigations, that the generally satisfactory condition in which the specimens in the Museum have been found, notwithstanding the insufficient care which has been bestowed on them, distinctly shows that the idea, believed to be prevalent, of the climate of Bengal being necessarily destructive to Natural History collections is altogether erroneous. Zoological specimens are undoubtedly perishable objects, but those precautions which will preserve them in the cabinets of a European museum, for precautions are everywhere necessary, will certainly be found equally efficacious in this country also. Any objections therefore to the maintenance of such collections, based upon the special difficulties of preserving them in the climate of Calcutta, must be held to be fallacious.

"The Society's collection of Fossils is also very valuable, especially those of Tertiary age from the Sewalik range, Ava and Perim Island.

* * * * *

"The motives which have led the Governments of all other civilized nations to establish museums at their capitals apply with equal force in the case of British India. Nor would arguments be wanting to show that the obligations on the British Government to endow a Museum at Calcutta have even more than usual cogency. For if such a patronage of science is fitting in a national government like that of England, which affects no greater wisdom, no superior civilization, no larger liberality than the mass of the citizens, does it not become a paramount duty in this country, where the rulers are a handful of foreigners who claim for themselves the ability, if not the will, of taking the lead in all improvements?

"The enlightened views which the Government of India have already displayed in the establishment of the University of Calcutta and the Geological Museum, and the intentions which it is understood to have in respect to the formation of College Museums, give reasonable ground to hope that a proposition for the foundation of a National Museum at Calcutta might be favourably received by Government at the present time."

In the reply which is dated two months later, the President in Council "recognized it as a duty of the Government to establish "in the metropolis an Imperial Museum for the collection and "exhibition of specimens of Natural History in all its branches, "and of other objects of interest, physical, economical and historical, when the existing pressure on the public finances shall "have been relieved." At the same time Government repeated its offer to take into its own custody the Society's geological and palaeontological collections—an offer which was again rejected by the Council on the ground that in the prospect of the establishment of a general museum, it was undesirable to separate temporarily one portion of their collections from the rest. An application for a small additional grant to the Society's Museum was also unsuccessful, and the whole correspondence was then forwarded home to the Secretary of State.

In 1862 the subject was taken up again by the Government, which now declared itself prepared to carry out the project. The Society replied by making certain suggestions as the basis on which negotiations might be carried on for the transfer of its collections to Government. These conditions being satisfactorily settled, the question of the proposed transfer was at the commencement of 1864 submitted to the Society at large, and fully acquiesced in with only one dissentient voice. The proposition having received the sanction of Her Majesty's Government, Dr. J. Anderson was appointed Curator in the following year, and the transfer was completed during the last session of the Legislative Council by the enactment of Act XVII of 1866 for the appointment of Trustees.

We have thus traced the history of the new Museum from the day when Sir William Jones laid the modest foundation of his Society "for enquiry into the History and Antiquities, the "Arts, Sciences and Literature of Asia." In doing so, we have necessarily had to introduce some matter relative to the labours of that Society in the progress of science; we wish it had been in our power to enlarge more at length on this subject, and we shall hope to return to it on some future opportunity. It has at times been deplored that the Asiatic Society, whose renown is so inseparably associated with the names of its founder, Colebrooke, Wilkins and Wilson, and to which Professor Lassen has dedicated his '*Indische Alterthumskunde*' as the foundress and indefatigable patroness of scientific investigation in India, has of late years seemed to wander from the paths of literature, and sought employment in another sphere. This is not the occasion on which to review the past literary labours of the Society, or to bewail its apparent decline since the palmy days

of the old Orientalists. That the Society has declined in philology, and that its place has for the present been usurped by the Royal Asiatic Society and the Sanscrit Text Society, we are perfectly ready to admit, and the cause is perhaps sufficiently obvious. There may have been times too, when the Society has exhibited a supineness and apathy unworthy of its antecedents, but that there are any of the signs of decay about that noble institution, we emphatically deny. Philology is only one branch of the numerous studies of which the Society has been the custodian in India during the last half century, and it is quite possible that by its labours and researches in other fields, it may have fully atoned for any apparent neglect of that science.* In fact, when we consider the extent of ground covered by the *Asiatic Society* and the varied nature of its pursuits, it cannot but strike us as unreasonable to expect to find surpassing excellence and industry in each particular department. The Society has done much for the natural history as well as for the literature and antiquities of India. From the time when Colonel Lambton's geodæsic operations were exciting the admiration of Europe, it has ever been foremost in encouraging the experiments and observations of science in this country, and in publishing their results. Witness the interest with which it chronicled the geological and fossil discoveries of Cautley and Falconer thirty years ago. Those discoveries must ever form an important epoch in the history, as indeed they laid the foundation, of Indian geology. Witness again the zeal with which, as we have already related, the Society took up the project of a Museum of Economic Geology, and otherwise indirectly assisted the labours of the Geological Survey. Archæology again is another branch of science, the study of which the Society has prosecuted with eminent success. Witness its valuable collection of antiquities lately transferred to the Indian Museum. Witness the discoveries of men like Wilson, Prinsep, Cunningham and Kitto, names that will always be associated with the renown of the Asiatic Society of Bengal. Moved by its representations too, Government has of late years performed its duty to this science by the appointment of Archæological Surveyor, and it is now to be hoped that the combined action of the Society and the survey may revive the interest of former days, and bring to light fresh discoveries which may help to unravel many dark passages of early Indian history. In meteorology the Society has been carefully chronicling observations since 1823, and Mr. Piddington's memoirs on the Law of Storms appear to be ubiquitous in the *Journal*. The Society's collection

* Vide *Englishman*. June 22nd, 1866.

of meteorites is also very valuable. Nor has the pursuit of Natural History been more neglected. The establishment of the Company's Botanic Gardens, and later, the foundation of the Agri-Horticultural Society of India, have, to some extent, removed the study of Botany from the sphere of the Asiatic Society, yet contributions to the knowledge of that science have from time to time found their way into the Society's *Journal*, while we have already hinted at the intimate connection which has always existed between the Society and the successive Superintendents of the Gardens. In zoology as wide a field was open, and it is due to the industry and activity with which this branch of science has been studied that the Indian public will soon be able to gaze upon a National Museum, which, it is believed, will reflect no insignificant renown upon this city. In a word, whatever opinion may be formed of the part which the Indian Government has heretofore played in the patronage of science, we may safely affirm that never have there been any scientific operations carried on in this country, which, if not directly originated by it, have not been largely indebted to the action of the Asiatic Society.

Under the arrangement between the Society and Government which has been confirmed by the Act of the Legislature, the former transfers its valuable zoological, palæontological, and archæological collections to Government, receiving accommodation in the same building for its library and numismatic cabinet which it retains. The Government Museum attached to the Geological Survey in Hastings' Street will also be incorporated with the Indian Museum, so that in these sciences at least the new institution commences its existence under unusually favourable auspices.

A Natural History Museum, using the term in its most extended sense as embracing all the known facts relating to the past and present history morphology, and structure, of organic and inorganic bodies, is an attempt to make Nature illustrate herself—to exhibit the sequence of forms in time, their distribution in space, and their affinities. This we regard as the chief and specific object of a public museum, but before discussing the purely scientific value of such an institution, we shall devote a few words to its importance as a means of general education.

The knowledge of things, their properties and mutual relations, is best attained by direct observation of the objects themselves, by the use of the two senses, sight and touch, and in every museum of any pretensions, the attempt is always made to group the specimens in accordance with their known affinities, so that a definite impression is left on the mind of the observer, of a nature not likely to be soon effaced, and a little reflection, on his part, of the mutual relations of the facts observed yields

him the intense satisfaction of having made an ascertained truth his own. Brought into contact as the sight-seer is with objects of the most diverse kinds, he is compelled to use his observing faculties, whether he will or no. The objects of his immediate observation may be apparently very nearly allied to each other, and seeing them placed side by side and bearing different names and coming from different parts of the world, he asks himself wherein the difference lies, and attempts to detect it; in other words, he observes, compares, and generalizes, and every time he is repeating this complex mental act, he is unconsciously adding to his knowledge, and extending the capability of his mind for the reception of truth. Granted that to the uneducated man the objects have little or no meaning, still it is hardly possible even for the most unlettered to visit the galleries of a well-arranged museum, without deriving profit as well as pleasure. It may be the rustic gazes vacantly upon the objects presented to his eyes, but so far as each of these interests him and fixes itself upon his mind, his ideas must necessarily and to that extent be enlarged. The very fact of seeing new things, of wandering for an hour out of his daily routine to discover that the world is larger and has more curious and varied features in it than were dreamed of in his philosophy, cannot be otherwise than beneficial to his bucolic intellect.

Nor is it merely the uneducated mind that finds instruction and amusement in contemplating and admiring the varied works of creation, as exhibited in a museum of the natural sciences. There are persons who, with no pretensions to be ranked with scientific men, have nevertheless congenial tastes and sympathies, and while such men have not the opportunity nor perhaps the previous training requisite for making any great discoveries, they are eager enough to adopt the conclusions arrived at by wiser and more experienced observers. They may only have the leisure to gather scientific knowledge in a general manner; and with the assistance of a good descriptive catalogue, we know of few methods in which information may be more rapidly or pleasantly acquired than a day spent in a museum in the study of some particular branch of physical research. There is, perhaps, no department of knowledge so fraught with interest to the popular mind, as that which attempts to investigate the phenomena of life and the structure of organic and inorganic beings. The best proof of the truth of this is to be found in the number of visitors daily crowding public museums and zoological gardens in all parts of the world: and India is no exception. The total number of visitors to the Asiatic Society's Museum during the first six months of the present year amounted to 73,198, giving a

daily average of 406, amongst whom nearly all the nations of Southern Asia are represented. In the Visitors' Book we find mention of the following tribes and races among the sight-seers:—Bhooteas, Nepalese, Siamese, Burmese, Malays, Chinese, Polynesians, Andamanese, Afghans, Kashmirees, Punjabees, and other tribes of the North-West, and crowds of the Hindoos and Mahomedans of Benggal. Such a list of itself is a powerful argument in favour of the claims of an institution which has the power to draw together and interest such a diverse assemblage of men; they return to their homes, their minds stored with new ideas, and their visit moreover having the effect of spreading abroad a knowledge of the wonders of European science, the museum must in this way, prove a powerful stimulus to the intellectual development and civilization of their respective races.

Regarding a Natural History Museum, however, as a purely scientific institution, we may say, in all truth, that its chief end is to serve as a store-house for the reception of original and type specimens from all parts of the world, brought together either by private individuals, exploring expeditions, or by contribution from other museums. The first object is to collect such specimens, and thus to preserve intact the facts of nature and the discoveries and labours of men of science, and to render them available for the observation and research of those who could not otherwise have the opportunity of familiarizing themselves with the relations of an extended series of natural forms. The facilities which such collections afford for the identification of species by well-authenticated specimens are known to every naturalist who aims at certainty in his identification. The great value however of type specimens has reference to the future progress of science, as their preservation has undoubtedly exercised a powerful and beneficial influence on its past history. Where such specimens have not been preserved, it has been necessary for naturalists to rely solely upon written descriptions, which obviously may contain within them many elements of error arising from imperfect knowledge or observation. It not unfrequently happens, in the subsequent study of similar specimens from different localities, that doubts arise as to certain details of the written definitions, which can alone be solved by a reference to the original materials, or again it may be desirable to re-examine the specimens in relation to some new point of interest, which may have arisen from more extended research. The careful preservation, therefore, of an object which has been the subject of exhaustive description, and the discovery of which may have given intensity and meaning to some aspect of physical truth hitherto little understood, is a duty

incumbent upon those who have the interests of science committed to their trust. Specimens are the pillars or foundations on which the whole superstructure is built. Preserved in a general museum, the history of science can, with a little painstaking study, be read from them, and the truth of the deductions, which have been made by original observers, can be tested by a direct reference to the materials from which they were derived. If a series of such objects may be said to contain in them a history of science, they are therefore, to that extent, the most perfect means by which a definite conception of the scope of the relations of the science and the nature of its generalizations can be conveyed to the mind of the student. The mastery of the facts of any one science is the work of a life-time, and at the best will be but imperfect, when we remember the remarkable interdependence and complexity, or we might even say involution of all natural operations, and how impossible it is for the naturalist to have a philosophic grasp or understanding of the phenomena of his special science, if he does not possess a general acquaintance with those which come under the domain of other and cognate departments of research. The chemist, for instance, to have an enlightened comprehension of chemistry, must be practically familiar with the forms of minerals, and understand the laws of crystallography; but if he aims at being an authority on inorganic chemistry, he must rest content to derive his knowledge of mineralogy from the recorded observations of others and the study of specimens preserved in museums, without entering the field as a professed mineralogist. The more men become specialists in this sense, the more rapid will be the progress of scientific discovery, and there is no more valued aid to this form of specialty than a general museum, in which the science, whatever it may be, is set before the student in a symmetrical and compact form, enabling him in a very short time by careful observation, and assisted by his presumed proficiency in a nearly allied branch of investigation, to acquire rapidly all the information that is necessary for his purpose. Even recent zoology itself presents such a diversity of objects that it would be impossible for any single individual to become familiar with them all, if the acquaintance of each had to be made by personal and independent research. Fortunately this is unnecessary, so long as we have in public museums the opportunities for the rapid acquisition of ascertained facts in each department of science, in the exhibition of complete series of specimens, arranged and classified according to their affinities.

The biologist, geologist, and mineralogist, as observers and interpreters of the facts and phenomena of nature, have doubtless

advanced on their career of discovery, but a great *terra incognita* lies before them, and indeed they have scarce commenced their march through it, possessing as yet but the most vague and imperfect outline of its physical features, for which even they are indebted to researches so modern as those of the distinguished naturalist and philosopher, Darwin. In biology one of the great problems to be solved is, what is the life-history of a species? Is each species an independent creation, or are species related to each other by descent? Now in mapping this new and unexplored field, unless this eminent discoverer had had the old landmarks as his guides to rely upon as the means of verifying his observations, we are convinced that his admirable speculations would have been lost to science. For, although perhaps the direction in which these researches should be prosecuted was suggested in the course of his extended travels, yet there can be no doubt that the materials which led to his generalizations were derived from the investigation of the animal forms stored in our great national collection. And it is a fact that by means of museums some of the most philosophical generalizations in biology have emanated from men, whose lives have been spent within the narrow limits of their native country.

The biological department of a general museum will always illustrate the past history of organic forms, as well as their present number and distribution in space, and those two departments, palæontology and recent zoology, are so inseparably united, that it is impossible to understand aright the ascertained truths of biological science without an intimate acquaintance with the facts of both. All our knowledge of the relations of extinct forms is based, as every one knows, upon the facts of recent zoology, and hence the great importance to the palæontologist that the comparative series of recent forms, in a general museum, should be as perfect as possible. As the remains of extinct plants and animals seldom or never preserve their original internal characters, and as what usually remains are the hard parts and skeleton of the animal and the fibrous or woody tissue of the plant, a museum, to be of any practical use to the palæontologist, should possess one rich comparative series of *endo* and *exo* skeletons of animals, and another illustrative of the structure of the vegetable kingdom.

The value of local specimens in a museum is obviously greatly enhanced by the presence of corresponding specimens from other parts of the world, for the purpose of comparison and for registering the facts regarding local variation. This class of facts is of the highest importance to systematic biology, it being impossible, in the majority of instances, rightly to appreciate the

value of specific characters, unless individual examples of the species have been carefully examined from the extreme confines of the area of its distribution. This is indeed the only method which will lead to correct conceptions regarding the limits of the variation of species. We are inclined to think that if these phenomena studied in connection with the physical and climatic conditions of the districts in which the respective forms are found, much might be accomplished in elucidating the causation at work in producing local varieties. It is at the same time true that in such enquiries we must never lose sight of the mass of facts, which force upon us the conclusion that there are internal causes in operation in the animals themselves, tending to produce a certain capacity of variation, and that in given directions. By collecting the local forms of species, we should be enabled to determine the characters which are most subject to variation.

In connection with the deeply interesting but abstruse question of the variation of species, there is a familiar aspect of it which however, as it appears to us, has not received that general attention which its importance deserves. We refer to human influence as a modifying cause of external characters and structure. Much valuable information has already been contributed on this subject, but no definite result has been attained regarding the original stocks from which the many diverse breeds of cattle, and other domestic animals, have originated; and the imperfection which characterizes our present knowledge of this department of zoology is no doubt to be attributed to the fact, that hitherto the enquiries have been based too much upon preconceived ideas, to the exclusion of practical observation and research. Now, there is probably no country in the world which presents such a rich array of facts for investigation in this section of recent zoology, than is to be found in this region which boasts of a civilization second to none in its antiquity.*

* These remarks have been suggested by a letter of Professor Agassiz on this subject, which was lately submitted to the Asiatic Society of Bengal, and as there is no greater living authority on such a matter, we quote some extracts. "A great problem, bearing upon the history of the progress of civilization, still awaits a solution at the hands of naturalists. Where historical documents are wanting, the facts of nature may guide the student; and in the case of the origin of domestic animals, we have hardly any trustworthy tradition, though wild animals closely related to them have been found all the world over. It has therefore occurred to me that a careful comparison of these wild animals with the various breeds in a state of domesticity might throw some light upon the first seats of agriculture and human civilization. But the materials for these comparisons are wanting. I would begin with cattle, as of all our domesticated animals

And it is in the power of most men of education to assist in the investigation of an enquiry of this kind, by accurate notices of the habits of the wild species, and by remarks concerning the uses to which the domestic breeds are put, the amount of milk they give, the size and weight to which they grow in different countries, the age they reach when they first calve, the length of gestation and how long they continue to bring forth young, &c. We would further suggest that they should contribute to the Museum in Calcutta full-grown skeletons of the sexes and young of the various breeds for comparison with each other and with those of the ferine races.

An early opportunity will probably present itself for extending our knowledge on this subject in the prospect of Dr. Fayrer's proposition for an Ethnological Congress of the races of Bengal. It appears to us that the value and interest of such a Congress, which by the way it is proposed shall be held in connection with the Agricultural Exhibition of 1867-68, would be greatly increased, if the various tribes of men were accompanied by sexual examples of their domestic breeds of cattle, sheep and goats, and of the implements which they use in the prosecution of their primitive agriculture. In many cases, the animals, like the men themselves, would be semi-ferine, and great facilities would thus be afforded for observing and registering the results of domestication, when the causes in operation are tribes of men in every degree of civilization. The mass of facts which would thus be collected, would prove a mine of wealth for further research, and lead to issues of the highest moment to our knowledge of the history of man. And probably the same difficulty would not be experienced in procuring examples of the various tribes for the purposes of the Congress, if they were to be accompanied by specimens of their various domestic breeds and agricultural implements, as will doubtless suggest itself, if the men and women are asked to attend the exhibition without any definite inducement being held out to them.

In considering the special uses and value which may fairly be expected from the Indian Museum, not the least will be the adoption of a universal and more accurate nomenclature. If the Museum is to be of more than local interest, if it is to contribute to a more thorough knowledge of the natural sciences throughout

"it is most intimately connected with the progress of human culture." In referring to the various theories which have been advanced regarding the origin of our domestic breeds he says: "These suppositions cannot stand the test of a close criticism, and it now becomes necessary to look further east for its probable origin, especially since philology and history point to India as the primeval seat of civilization."

the world, it is all-important that the specimens should be distinguished in conformity with the generic and specific names, by which they are known to men of science at home, so that naturalists in both countries, when they have occasion to mention a genus or species, may be using terms which will be mutually intelligible. The only satisfactory way in all cases of doubt by which this can be accomplished, is by sending to Europe for identification a duplicate series of specimens with numbers attached, corresponding with those affixed to the specimens retained in the Museum, the latter to be named in conformity with the numbered list, when it is returned to this country. If this uniformity with European nomenclature is carried out in the Indian Museum, this institution will be in a position to accomplish one of the essential ends for which it has been established, in providing a treasury of reference which the scientific men of India may consult in all cases in which they have any difficulty as to the identification of species, or doubts relating to the generic and specific terms which are entitled by priority to general adoption. If the Museum is properly conducted, and if the Director is ultimately provided with an able assistant in each department, (and this will undoubtedly be necessary, if the Museum is ever to contribute any results of value to science at large by the elucidation of Indian biology), the institution will be enabled to receive for the purposes of identification the private collections of naturalists, and thus contribute much to our knowledge of the numerical strength of species, their geographical distribution, and the amount of variation to which they are subjected by physical, climatic, human and occult causes. One very important end which would be arrived at by the adoption of the foregoing method, would be the elimination of the very many errors in nomenclature which have crept into Indian systematic biology. Under the great difficulties with which naturalists have to contend in India, these imperfections were to be expected, as in the majority of instances, when their descriptions were drawn up, they were far removed from all those valuable aids to identification which afford such facilities to investigation in civilized lands. Let the circumstances be remembered under which these men prosecuted their discoveries, and we are convinced that every generous mind will applaud the decision of character, oneness of purpose, and scientific ability and zeal which carried them so successfully through the many difficulties that surrounded them on every side, and enabled them to contribute so extensively to our knowledge of the Natural History of this country. They were deprived of one great aid to research—the means of informing themselves of what had been already accomplished

in the domain of Science; scientific literature was a sealed book to them, and no museum was available in which they might successfully prosecute their critical studies.*

It is quite possible that certain Indian naturalists may have laid themselves open in a very marked degree to the charge of a want of precision in their descriptions, and in having given an undue prominence in certain instances to some of the variable characters of species, a quicksand which doubtless would have been avoided by increased experience and more exact observation. At the same time, we much regret the hypercritical remarks on their labours with which some English zoologists have, in a captious spirit, burdened the pages of their monographs, founded in some instances that we are aware of on ignorance or at least imperfect knowledge of the facts as they actually exist in this country, and which no amount of cavilling will alter. In a tropical climate, the obstacles to original enquiries by Europeans are very great, and we think that the most becoming attitude of science at home would be to act as the foster-parent to her children in other and less favoured regions, rather than to discourage their growth by fastidious criticism.

* A notable instance of the truth of our remarks will recur to those who call to mind the adverse conditions under which the brilliant discoveries of Falconer and Cautly in the Sewalik range were prosecuted. The point was prominently noticed by Sir Charles Lyell, when, in conferring the well-earned honours awarded them by the Geological Society of London, he justly eulogised "their indomitable energy and perseverance and scientific enthusiasm." "They were not versed in fossil osteology, and being stationed on the remote confines of our Indian possessions, they were far distant from any living authorities or books on comparative anatomy to which they could refer. The manner in which they overcame these disadvantages, and the enthusiasm with which they continued for years to prosecute their researches when thus isolated from the scientific world, is truly admirable. From time to time they earnestly requested that Cuvier's works on osteology might be sent out to them, and expressed their disappointment when from various accidents those volumes failed to arrive. The delay perhaps was fortunate, for being thrown entirely upon their own resources, they soon found a museum of comparative anatomy in the surrounding plains, hills and jungles, where they slew the wild tiger, buffaloes, antelopes, and other Indian quadrupeds of which they preserved the skeletons, besides obtaining specimens of all the genera of reptiles which inhabited that region. They were compelled to see and think for themselves while comparing and discriminating the different recent and fossil bones, and reasoning on the laws of comparative osteology, till at length they were fully prepared to appreciate the lessons which were taught by the works of Cuvier. In the course of their labours they have ascertained the existence of the elephant, mastodon, rhinoceros, hippopotamus, buffalo, elk, antelope, deer, and other herbivorous genera, besides several canine and feline carnivora."

The *locale* of the Indian Museum, and the more immediate object for which it has been founded, *viz.* the exposition of the Natural History of the Asiatic continent and its Archipelago should give it the first and greatest claim upon the support of all scientific men and institutions throughout this country; and its power as a means of popular instruction, as an aid to systematic study, and as a treasury of materials for original investigation, will be in direct relation to the assistance which it receives. The more its collections are increased by the addition of fresh objects, the more will its influence as an instrument of education and scientific progress be advanced. The object aimed at is the formation of a central or national museum for the reception of all specimens illustrating any point of interest in the natural history of Asia, a great repository of established facts with which the scientific investigator, in all cases of doubt, may compare and supplement the results of his own researches. Herein lies one of the chief advantages of a central or national museum. Where rare and valuable specimens are diffused among private collections, it is frequently impossible for the naturalist to examine them. Where they are dispersed among numerous public museums, the difficulty is only to some extent removed. It is obvious, therefore, that the collection of as many type specimens as possible in some central locality is the method which is most conducive to the interests of science. It is to be hoped that the Indian Museum will henceforth be the means of locating in Calcutta many such specimens which, under the impression that the Asiatic Society had already in its charge a larger collection than it could well take care of, would heretofore have been distributed among the various public and private collections of Europe. As a central museum, it will continually be receiving donations of natural objects from all parts, and in time a large store of duplicates will be amassed, and we hold that the formation of such a series forms a very important part of the functions of an institution like the Indian Museum.

The use of duplicates is two-fold,—*first*, to advance science by supplying to original investigators, wherever they may reside, fresh materials for actual study, and, *secondly*, to diffuse knowledge by providing local museums, colleges, and other educational institutions, with the properly identified and labelled specimens necessary to give definite ideas of the relative diversities of the various productions of nature. If these specimens are distributed in the way indicated, and if full advantage is taken of their practical uses by the institution of lectureships and professorships of the natural sciences, the description in the class-room of the objects themselves forming the substance of the course of

instruction, we feel assured that such a system will prove an active power in stimulating the minds of the youth of this country to habits of exact and patient observation, and tend to develope original thought. In the mere description of objects which are not present to the eye of the student, and in the barren statement of the general laws which have been deduced therefrom, the memory is overburdened with meaningless terms, and a hazy and indistinct picture is produced upon the mind. On the other hand, it is obvious that where the distinguishing characters are demonstrated by a direct appeal to the senses of sight and touch, the comparative method being applied, so that the relative position of parts is shown, and the serial homologies of the organs explained thereby, the student carries away with him a definite image of the object, and a memory stored with an intelligent understanding of its comparative relations.

Such lectureships it will probably be found convenient in the Presidency town to establish in connection with the Museum itself, but it is to be expected that ere long some of our Mofussil colleges, as at Hooghly, Patna, and Benares, will be demanding their Professors of Natural History, and for these duplicates will be required. The point did not escape the attention of the Society, when urging the claims of the museum upon Government. "A museum like that contemplated," writes the Secretary, "ought not to be viewed as a portion of any merely scholastic arrangements. Once classified, catalogued and arranged, the valuable specimens which would form the main series of such a public museum must not be removable, and more especially must not be subjected to the risk of breakage and loss which their use in the common class-rooms would entail. From the many duplicates however which every such collection affords, a perfectly effective, though limited, set of specimens in each department could readily be supplied for lecturing purposes. A public museum of the kind contemplated would form a most valuable and a most essential portion of all complete educational arrangements, but in the opinion of the Council, it ought not to be made subordinate to any individual school or college. It should, they think, be viewed rather as an adjunct to the university, than as a part of any mere collegiate plan. It ought to be as it were the general library of reference and consultation for all students of all schools, not the lending library of one alone."

The Indian Museum will thus possess in an eminent degree, the greatest opportunities and facilities for the exposition of the facts and doctrines of the natural sciences. Its biological

cabinets and galleries will be stored with specimens illustrating the succession of the organic forms of this region in time, their relation to recent forms, the structure of these and their distribution in space. Geology will have the facts of petrology and the more important and interesting phenomena connected with the deposition, consolidation, stratification and disintegration of rocks explained by specimens of the rocks themselves, by accurate models, instructive diagrams, and correct reproductions in drawings of the geological features of natural scenery. The deeply interesting science of mineralogy will have its varied specimens and beautiful series of individual forms exemplified by models explanatory of the laws of crystallography. The history and development in Asia of man's inventive faculty which directs his energies to the production of works of art, will be read as far as possible from its rich archæological collections, while ethnology will be illustrated by casts taken from well selected examples of each race and by a valuable collection of pelvises and crania. This department will also include the productions of the industry of modern tribes, who as yet are strangers to civilization, the consideration of which is intimately connected with antiquarian research, as exhibiting the different progressive stages through which men pass ere they attain to civilization properly so called. The various degrees of present human development are tolerably faithful reflections of successive phases of development in antiquity.

In the foregoing remarks on the scope and aim of the Museum we have only incidentally referred to a most important section of zoology, which is as yet wholly unrepresented in the collections,—the comparative anatomy of the soft parts of animals. In nearly every European museum, the materials for the illustration of the internal structure of animals have been contributed by local zoological gardens. With a collection of living animals as the handmaid of the museum, and with an able prosector attached to it, whose duty it would be to anatomize and preserve the structural peculiarities of the various creatures after death, a vein of untold wealth would be opened in the field of comparative anatomy. In illustrating this department no better model could perhaps be imitated than the museum of the Royal College of Surgeons, London, which contains a unique and grand collection explanatory of anatomy properly so called. The series are arranged according to the organs, and starting from the simplest form they follow the successively and progressively more complex condition of the same organ, terminating in most cases with that which exists in man. If a plan similar

to this were adopted, the museum would be in a position to lay before Indian naturalists a phase of zoology which has hitherto received too little of their earnest attention, forming as it does the groundwork of any natural system.

The foregoing however is only one of the secondary practical uses of a zoological garden, which has moreover a further utility of its own in affording instruction and recreation, in providing facilities for the study of the habits and instincts of animals, and opportunities for testing their capabilities for acclimatization.

The information to be gained in a zoological garden is in a certain degree akin to that which may be derived from a Natural History Museum, and the mental exercise is nearly the same in both instances, with this difference however, that a greater acuteness of observation is necessary in the analysis of the complex phenomena of life than is requisite in the discernment of purely physical characteristics,—the subjects of sensation. The specimens being full of vital activity, and each having habits and instincts peculiar to it, a much more vivid mental impression of the individuality of each animal is produced than can be obtained from the mere study of the lifeless form. The recollection of any peculiarity in the habits or instincts of an animal which has been seen and noted by the observer, assists the memory in retaining an enduring image of the creature itself. If the descriptive catalogue contains a short notice of each specimen, (and the extent of a zoological garden usually permits of this in a volume of moderate size,) pointing out its internal characters, its relation to other animals, and detailing its known habits and instincts, and the food on which it lives, we combine one of the most perfect means for communicating instruction in natural history, and one of the most pleasant methods by which knowledge can be acquired. As the visitor wanders through the well-planned grounds and at intervals is introduced to animals, some of which may be familiar to him by name, but of which he may have previously formed erroneous conceptions, whilst others may be entirely new to him, his mind finds in the novelty of the objects, and in the many interesting and amusing traits which they exhibit, recreation of the purest and most healthy description.

The instincts of animals are quite as essential as corporeal structure to the wants and existence of each species and one of the most important objects of a zoological garden is to provide facilities for observing and registering this class of facts, which are as numerous and varied as are the objects of creation. Such investigations have reference to the diversities

of instinct and its relations to the physical and physiological functions, and to the life-wants of the animals in which it is manifested. Researches however of this kind conducted on animals in confinement, must necessarily in many instances yield imperfect results, as the restraints which are placed on the natural habitual actions and instincts act as a powerful modifying cause of these phenomena. The animals, in the majority of cases, have their food provided for them without any active effort on their part, and this of itself modifies all those interesting series of habitual actions and instincts, which in a state of nature they exhibit in procuring their daily sustenance. And in how many instances are we denied any information regarding their sexual habits and instincts, because confinement from some unknown cause is unfavourable to the integrity of their reproductive systems? The results yielded by such observations are of the highest value and interest in explaining and elucidating the modifications, variations, or total loss of instincts, when an animal is subjected to an altered condition of life, all of which points are intimately connected with the variation of species, although, as Darwin has pointed out, they may be subordinate in importance to the effects of the natural selection of accidental variations, that is, variation produced by the same unknown causes which originate physical variation.

If greater care and attention however were bestowed on such details as space, temperature, food, cleanliness, and hiding places, and if the attempt were always made to place the animals in conditions somewhat analogous to those of their native countries, it is probable that they would be found to conform more nearly to their natural habits and instincts. Such natural conditions, it is obvious, as regards the majority of the brute creation, can be far more easily secured in a tropical, than in the most temperate climate. Placed in the open air, protected simply by a wire-fence enclosing small trees and shrubs for shade, sleeping places and food, the animals would enjoy comparative freedom, and therefore to that extent be most advantageously situated for observation. At the same time there are numerous examples of every type of animal from sponges to mammals, whose systems do not greatly rebel against the restraints of confinement, and all of these can be made the subject of careful study. Their constitutions possess such a power of adapting themselves within certain limits to countries with external conditions differing to some extent from those of their own, that they can frequently be made the successful subjects of acclimatization.

As a general rule, all efforts at acclimatization aim at increasing the wealth and productive resources of a country, and have reference therefore solely to those animals which may be made directly or indirectly useful to man. The practicability of such experiments depends however, to a great extent, upon the capabilities of the country for the reception of new forms of life with a prospect of the animals thriving, and at the same time not proving detrimental to the already established races, domestic or in a state of nature. The country which presents the greatest diversity of physical conditions, will necessarily be that which offers the greatest facilities for acclimation, and in this respect, India, with a range of climate and physical conditions hardly to be equalled in any other part of the world, may probably claim precedence. The traveller in a few hours can be transported from a tropical climate to one purely temperate, and from the monotonous level of the Gangetic plain to the midst of grand mountains which have no rivals in nature. A wonderful diversity of animal forms could thus be made the subject of illustration. In addition to the rich fauna of Southern Asia, the remarkable animals of Australia, Madagascar, Africa, and Southern America might find a place, and many others from extra-tropical or even from temperate climates might be represented. We say this advisedly, for we lately visited in Calcutta a collection of animals from Europe and North America, all of which were in the most perfect health, although they had passed through two tropical summers.

And yet with all these opportunities, with a vast region before us characterized by every possible phase of climate and physical feature, we have not yet attempted to introduce into this country one single animal of commercial or domestic importance. Something perhaps has been done by private individuals of late towards improving the domestic breeds of India by importations of superior specimens of similar species from England, the Cape, and Australia, and much good may also probably be expected from the wide interest taken by Europeans and the leading zemindars in the Agricultural Exhibitions which have now become an institution of the country.

The Indian Government has won the estimation of all scientific men in Europe for the active interest which it has taken in the duty of utilizing and improving the vegetable products of its territories. The Botanic Garden has been instrumental in determining the commercial importance of many native trees and plants, which have thus become the source of great wealth to the country, and in introducing foreign plants of utility and pointing out the localities best suited to their habits of growth. Similarly, by the organization of a Geological Survey, the

Government has sought to extend our acquaintance with the mineral and agricultural resources of this empire. A Zoological garden could confer advantages of a like kind, by ascertaining the economical value of certain animals and the uses to which they may be applied, by showing what species are injurious to agricultural operations or destructive to more useful animals, devising means for keeping the one in check, while encouraging the acclimation of the other. Such an institution therefore has claims upon the consideration of Government, and we sincerely trust that many more years will not be suffered to elapse before Calcutta is enabled to boast of her Zoological Garden. The collection at Madras is well known to be comparatively worthless, while that at Barrackpore is not deserving of the name. On the other hand, there is an extensive collection established at the Cape in connection with the Natural History Museum, and Melbourne can boast not only of an excellent Garden, but of her Acclimatization Society. It is to be hoped that Calcutta, the largest, wealthiest, and oldest European city of the East, will not continue much longer to labour under a disadvantage in this respect, compared with other colonies of Great Britain.

With the aid of a Zoological garden in Calcutta, many experiments in the acclimation of animals economically important might, we venture to think, be prosecuted with success. Such an institution would moreover afford valuable assistance in receiving and forwarding specimens intended for observation in other localities of India, in contributing animals to acclimatization and zoological gardens in other parts of the world, for which it would receive in exchange fresh materials for further research. This system is adopted by the Zoological Society of London, and by the Acclimatization Gardens of Paris and Melbourne, all of which have been the means of introducing many valuable animals into their respective countries. The foundation of a sister institution in Calcutta, which lies in the centre of the richest fauna of the old world, would be hailed by these Societies as inaugurating a new epoch in their history, and they would at once claim to be affiliated. The diversity of Indian animals and the circumstance that few examples of them have yet reached other countries would contribute to the success of the proposed establishment, as zoological gardens throughout the world being more or less interested in its foundation, would do everything in their power to ensure its prosperity.

And what, we may ask in conclusion, is to be the future of the Asiatic Society? Is it indeed the fact, as seems to have been at one time feared, that the transfer of its valuable collections to Government is likely to endanger the stability of this

noble institution? Is the Society linked so intimately with its museum as to be unable to exist without it? For our own part we have already stated our conviction that this argument was never employed by anyone *bond fide*. The Society commenced its existence without a museum, and had existed for thirty years before a museum was thought of; and is it asserted that now, when the Society has attained strength, vitality and influence, it will languish and ultimately die, because forsooth its researches in science will henceforth be aided by a munificently-endowed Imperial Museum in the place of its own necessarily limited and imperfect collections? On the contrary we believe it may be equally as useful, equally as popular, and equally as famous an institution as it has ever been. Nay, we would go so far as to say that the Indian Museum, if properly supported, will afford the Society the means of attaining even greater renown in modern science than it reached in the days of Prinsep and Wilson. To say nothing of the increased facilities for investigation and identification, presentations to the Museum will probably continue as heretofore to be made through the Society, will be discussed at the Society's meetings, and described in the Society's Journal.

But putting aside altogether the consideration of the Museum, we shall endeavour to point out the direction, in which we conceive the Society may well exhibit increased usefulness and activity, and we do so with the less hesitation, because it seems to us that the moment has arrived for more extended operations on the part of the Society, and that it is important that the opportunity should not be lost, of occupying the wide field of action now open to its forces.

One consequence of the transfer which has just been completed is obvious. Relieved of the expense attending its collections, the Society must gain in a pecuniary point of view, while the more general diffusion of science can only have the effect of expanding its subscription list. The surplus funds thus placed at the Society's disposal, it is no more than fitting, should be devoted to the furtherance of scientific pursuits, and there are two ways in which this object might be satisfactorily attained. The Government-grant towards the support of its literary labours will not be interfered with, and the continued publication of the *Bibliotheca Indica* will probably meet all the requirements of this department. But a most important object which the Society should at once set before itself, and of which it should not lose sight until attained, is the formation of a complete and standard consulting library for all India in every department of literature and science. That this country does not yet possess

such a library is, we think, a disgrace alike to the Government and to the Indian public. The position which the Asiatic Society occupies points it out as the most fitting instrumentality through which this disgrace may be effaced, and we earnestly commend the project to its most serious consideration.

But there is much to be done, and which must be done by the Society, in the more active pursuit of the sciences themselves. In physical science India has yet to make a name for itself. Who would imagine for instance, that notwithstanding the superior adaptability of an Indian climate for celestial observations, little or no advance whatever has been made in the science of astronomy in this country? Here then is a new field open, and comparatively unexplored. The Society certainly did its part in introducing the Hindu solar system to the notice of the learned; it is perhaps no less incumbent upon it (unless it simply aims at being an antiquarian body) to endeavour to keep pace with, even if it cannot anticipate and advance, the progress of modern astronomical science.

Hitherto the Society has been content to accept and chronicle whatever has been voluntarily contributed from without; it has rarely, if ever, organized any grand system of acquiring scientific information for itself. It has depended solely on the labours of amateurs, *dilettanti* men of science, and it has not even been at the pains to generalize from, or even to systematize; the results when supplied to it. It has taken for its motto that appeal to scientific men, which its founder might well urge in the infancy of the Society, but which will scarce suffice for the wants of the present day.* For now perhaps it behoves the Society to take up a more active, a more aggressive position. It must organize scientific expeditions and other such measures of acquiring information for itself. Let it select certain departments of science and devote itself with a set purpose to work them out. Let there be some plan, some order and method in its proceedings. Literary *desiderata* have not been unknown to the Society, and have indeed been productive of highly successful results. A statement of scientific *desiderata* would similarly be attended with the

* "It will flourish, if naturalists, chymists, antiquaries, philologists, and "men of science, in different parts of Asia, will commit their observations to "writing, and send them to the President or the Secretary at Calcutta; it "will languish, if such communications shall be long intermitted; and "it will die away, if they shall entirely cease; for it is morally impossible, "that a few men, whatever be their zeal, who have great publick duties to "discharge, and difficult private studies connected with those duties, can "support such an establishment without the most assiduous and eager "auxiliaries." Introduction to the Asiatic Researches. Vol. I.

acquisition of much valuable information, while the observations might be made as complete and perfect as possible, if supervised by the Society itself. Take for example the marine zoology of the Bay of Bengal, of which little or nothing is known at the present day. Aided by Government, why should not the Society superintend the movements of an exploring expedition, which might open this treasury of natural history to the scientific world?

Nor is it merely by organizing scientific expeditions to explore the fauna and flora of particular districts, that the Society has it in its power to afford material aid to the progress of knowledge and truth. Much may be effected in a simpler and less expensive manner, by a systematic use of the same voluntary instruments upon which it has hitherto solely depended for support, and by pressing others into its service. And in adopting the scheme we are about to propose, we believe that the Society would be taking the best steps towards enhancing its future popularity and prosperity. It will not be denied perhaps that, however crowded may be its meetings in Calcutta, there is throughout the Mofussil generally an apathy and a want of interest as regards the Society's proceedings. The majority of its members are apt to think that all that the Society asks from them is their subscription, and they look upon the Journal as being but a very poor return. In large centres they have, it is true, exhibited more interest in the pursuit of science and been led to effect combinations for the extension of their researches. Branch Societies at Lahore and Nagpore have lately been affiliated to the Parent Society at Calcutta, and a similar institution, we believe, is in existence at Lucknow. But these movements had their origin in the Mofussil, not in Calcutta. They may rather be compared to independent rivers coming to swell the mighty stream, than to branches springing out of and deriving life and nourishment from the same parent stem. The Society undoubtedly has within itself the elements of a grand universality, and the time has probably now arrived when it has become incumbent on it to apply these elements with a view to extend its operations. Its members are scattered over the whole of the British Empire in the East, and command the greatest facilities for original observation. It should endeavour therefore to awake their interest and sympathy, making them feel that, while the institution is one to which it is an honour to belong, its vitality nevertheless depends upon their individual exertions and activity. Now if, in addition to the Branch Societies which may have been organized in conjunction with the Parent Society of Calcutta, local

committees were also established, subordinate to and in direct communication with such Branch Societies, it is obvious that the machinery would be perfect for working out any department of science with the greatest success. In fact it seems to us that there need be scarce any limit to the formation of such local committees. Officials in India are, as a rule, highly educated men; the professional surveys have given to India a sprinkling of really scientific men. Wherever therefore two or three such men could be found in the same station or neighbourhood, a local committee would be ready at hand for the exploration of the antiquities, the geology, or natural history of the district. Most men in India again are sportsmen, and the excitement in the field would probably be none the less, if to it were superadded a scientific curiosity and interest as to the prey of the gun or spear. Such committees then would work in communication with a central committee which would propose to them definite objects of research, and by which their operations could be guided, superintended and controlled. The advantage of our proposal must be obvious. We assume that our central committee is composed of scientific men, and that having ready access to the Society's library and proceedings, they are in a position to see what progress has been made in any department, and what remains to be achieved. It follows that they are fully competent to advise and instruct the local committee in those very points in which Mofussil members of the Society are placed at a disadvantage. The observations being subsequently placed at the disposal of the central committee, would be digested, revised and edited thereby, and thus, while individual members had the gratification of seeing their labours duly recognized in the pages of the Journal, the results would be given to the world under the authority of a responsible body, and would be accepted by scientific men as bearing the stamp of the Society's renown.

The procedure of the system we have proposed may best be illustrated by the ethnological researches which have of late been engaging the Society's attention. Indeed, if Dr. Fayer's proposed Congress is ever to effect the great results which are expected from it not only in this country, but among the most eminent naturalists at home, we are convinced that it must be aided by the organization of some such machinery as we have sketched above.* It is quite possible that the information submitted to Government on the subject may contain much that

* Central committees, we understand, have since been organized, while these sheets were passing through the press.

is new and interesting, but it can hardly be expected to possess the same scientific value which it would have had, if collected under the immediate supervision and direction of an eminently scientific head. We have not a doubt that the Commissioners and Collector-Magistrates consulted would perform this, as every other of their numerous and multifarious duties, with the most scrupulous industry and integrity; but it were almost as unreasonable to expect that every public officer should be a finished ethnologist, as that he should spend his days in geologizing and searching for coal-measures throughout his district. The agency which we propose to place at the disposal of the Society, might not only be expected to take more than a passing official interest in the subject, but to accomplish the work more satisfactorily in a scientific point of view. Guided as such local committees would be by an able scientific body, they would enter on their task with all the known information on the subject furnished to them, and with their attention drawn to the special points requiring elucidation. And with properly-organized central committees to consolidate and systematize the results, we might hope to acquire such an array of facts upon the physical characteristics, the languages and habits of the various races of India, as would enable very accurate generalizations to be deduced.

We look upon the future of the Asiatic Society then as peculiarly promising. Useful it is certain to be, and it will probably be also brilliant. Only let the Society be true to itself, and exhibit steadiness and unity of purpose in the pursuit of truth. Let it seek to extend its operations, so as to invade every department of science. And while it is careful to draw within itself all the scientific talent of India, let it not despise the weaker members, but endeavour rather to economize and encourage their exertions by employing them in the observation of facts. And when reflecting upon its former glory, instead of bemoaning the lack of Prinseps and Wilsons in the present day, let it remember that the whole field of science is still open, and that there is much remaining to be explored on every side. Prinsep and Wilson undoubtedly did much for the consolidation of the Society, but we are as fully convinced that the Society may itself do much towards raising up among us Prinseps and Wilsons of the present generation.

ART. VII.—*The "Times" Newspaper.*

PROBABLY there is no question affecting England of greater importance to England than the condition of the European soldier. It is a subject trite, hackneyed, much discussed, and yet by no means threadbare. Indeed of the many who have discussed it, few have dived beneath the surface. It is a subject which civilians have shrunk from, which military men have indeed approached, but with which, from the prejudices of their military training, they have been peculiarly unfitted to deal. And yet, never in the history of England has that subject attained to so great importance as at present. India now swallows up 70,000 English soldiers. Amongst these the casualties from deaths and invaliding alone amount annually to upwards of four thousand.* Besides these, the number of discharges after limited period of service is annually increasing. Notwithstanding the many ameliorations that have taken place in the conditions of military service of late years, that service is becoming every year less and less attractive. At a period when the demand for labour is increasing in the English market, when America, Canada and Australia offer the most powerful inducements to the enterprising and the industrious, service in the army has become more than ever a last resource. We cannot wonder at it. Who indeed, possessing a spirit alive to the promptings of a natural and laudable ambition, would care to enter a service, the emoluments of which have, amidst the general growth of wealth, continued stationary; any rise in which beyond the non-commissioned ranks is so exceptional as to be regarded as impossible; a service in which a man ceases to be, in mind as well as in body, a free agent; in which demoralisation is scarcely to be avoided; in which marriage † is

* In the year 1864, the loss to the service by death and invaliding in the Bengal Presidency alone amounted to 2,330 men. In Bengal the total number of Europeans is under 40,000.

† In illustration of this we append the following letter, which has gone the round of all the English Journals, from a married private quartered at Chatham. He thus writes,—“There are three or four families living in one hut without any partition or screen between them of any description. My wife said to me, ‘Jack, we must have a screen between us and Mrs. B——, for I cannot stop here without it; I cannot dress and undress in the front of three strange men. And our child! Oh, Jack, how can we bring him up here?’ ‘You are quite right,’ says I; ‘but I have to pay your fare here, and that will cost a good deal of money.’ ‘Never mind, Jack,’

for several reasons scarcely to be thought of; and which offers in fine a provision for old age so slender, as to place the recipient in every respect in a disadvantageous position, contrasted with that of those associates of his boyish years, who were proof against the seductions of the recruiting serjeant.

These causes have always existed to a certain extent, but never to so great an extent as at present. The English army is permanently larger now than at any time since the conclusion of the great European War. Ireland, the seemingly inexhaustible recruiting ground of the empire, has, from political causes, ceased to afford the same material as of yore. Those of her sons who under ordinary circumstances would have filled up the gaps in the ranks of the British army, have gone to foster Fenianism in America. Our colonies every year attract more labourers to new fields of industry. Then again, India, which at present requires 70,000 British troops to guard her,—brought nearer to England,—stripped of many of the attractions with which distance clothed her,—no longer possessing a local European service with a monopoly of staff appointments,—is regarded by the would-be recruit with aversion rather than with interest, and service on her soil is, whenever possible, declined. Finally, the limited service system gives to soldiers the option of returning to civil life before their best years are exhausted by soldiering, and this is a liberty of which the majority certainly take advantage.

These various causes tend with unerring certainty to one result,—to make the recruiting of the English army a matter of extreme difficulty. To this difficulty the attention of the English public has been called over and over again in the columns of the *Times*, and, more often still, in the leading articles of those journals which devote themselves more especially to military subjects. The public, though at first startled, has ceased to be surprised at this result. It is now admitted that this question constitutes the most important military question of the day. A Royal Commission, composed of some of the most experienced and practical men, in the English civil and military services, has been appointed to consider it. If when, as in the ante-mutiny

"says she, 'I will live on dry bread until it is paid, but I must have a screen to
 "'put up at night.' We got a screen, and my wife is eating *dry* bread now,
 "and so am I; but I don't care about myself, it is for her sake I speak. Now,
 "who is to blame for this? I am sure some one is to blame, for neither Queen
 "nor country expect more from us than our best blood. That I have shed
 "already in India, and while I remain in the service I am always ready to do
 "the same without a grumble; but I cannot stand by and see women and
 "children treated like swine without speaking."

period, India absorbed less than 40,000 English troops,—when Fenianism was unknown,—when the attractions of America and the colonies had not been developed to their present extent;—if then the recruiting fields of England were unable to bear the drain upon them of a war of only two years' duration,—what would be the result, if hostilities were to break out now? Under the present military arrangements, and in the existing state of the empire, there are absolutely no reserves. We are told, on authority which it is impossible to dispute, that the difficulties in the way of keeping up the army at its present strength are so great as to be almost insuperable; that recruitment presents every day fresh obstacles; that therefore the maintenance of our army at the strength considered necessary for the support of British authority in various parts of the world is a matter the attainment of which causes great anxiety to the War Office. This is the case, be it remembered, in a time of profound peace; when from Peshawur to Cape Comorin, from the East to the West, not a shot is fired in anger throughout our Indian Empire; when Canada and Australia are not threatened; when even New Zealand has preferred to trust to its local army for its operations against the savages. If then these difficulties occur in the green tree, what will they be in the dry? If we can scarcely procure recruits for our peace-establishment, how will there be any possibility of doing so, should England be forced to take part in the war now raging on the continent? During the Crimean War, we recruited in Germany, we bought the aid of Sardinia. But in the present war Germany and Italy are principals in the fight, and will require every available man to fill up the gaps in the ranks of their own armies. We shall not even have the resource which was available and which was largely used during the great war with Napoleon. Hanover has ceased to be under the same ruler as England, and indeed, though independent now, it will probably find itself before long permanently united to the straggling territories governed by the Hohenzollern. Even Canada, which in the Crimean War, furnished a regiment to the mother-country, will require all its manhood for its newly embodied militia. We shall thus be confined in a time of war to a recruiting ground, which, it is admitted, is insufficient to fill up the vacancies occurring in a peace-establishment. Few will deny that this is a state of things that demands serious consideration. None, we think, will aver that it is a question the solution of which may well be postponed till the urgent necessity shall have arisen. This is an argument refutable by the fact that the necessity has in part arisen already. The difficulty of recruiting a peace-establishment is one of the great difficulties

of the hour. The unpopularity of service with the army is reported from all quarters of the United Kingdom. Remove that difficulty, popularise that service, and we will then admit that we may await patiently and confidently the approach of any contingency, rendering it necessary for an English army to take part in continental wars.

In considering the difficulties attendant upon recruiting, the *Times* newspaper has addressed itself chiefly to the importance of attempting to diminish the strength of the army, and it has indicated this country as the field in which such a diminution might take place. We entirely agree with the writer in this particular point, provided only that the diminution of European troops be effected on a principle whereby the services of all the subjects of the Crown of England may be judiciously apportioned in the territories dependent on England. To the mode in which this might be effected we shall hope to advert in a future article. We consider it, we confess, rather an adjunct to, than an integral portion of, the subject we are now discussing. That subject is how to popularise service in the British army. The diminution of European troops in India will affect, to a very minor degree, the principle of that subject, although undoubtedly it will remove some of the difficulties in the way of the efficient recruiting of a peace-establishment. The more important subject demands therefore our first and principal attention.

There are two modes in which military service may be rendered attractive. * The first is to increase very considerably the pay of all ranks and grades throughout it. The second is to introduce, to its fullest extent, the principle of reward for good and honest service. It is this, the second principle, that we advocate. There are many reasons why we think the other would fail in its object. In the first place, it would be very expensive. An increase of pay which would render the service popular amongst the classes from which the army is recruited must be extremely large; it must extend to pensions as well as to pay proper; and it would necessitate likewise eventually a considerable increase in the pay of the officers. But the expense would not constitute the greatest objection to this plan. Supposing, for instance, that the pay of all ranks and grades were to be greatly increased, we believe that the army would present little more attraction to the peasantry of England than it does at present. The system would remain just as it is now, in all its component parts, with the exception of the pay. Now it is less to the small pay than to the bad system that the mind of the labouring classes objects. We do not indeed believe that the pay of a private at the outset is, at all or very much too small. He is extremely well fed, he

is well clothed ; his lodging, if not at the present time everywhere such as it ought to be, will be shortly, under arrangements which have been sanctioned, all that he can desire ; the system of workshops, introduced into this country by that gallant gentleman and true friend of the soldier, the late Commander-in-chief, provides him with remunerative and interesting employment ; there are, besides, regimental libraries and regimental schools, and in many stations there are occasional exhibitions of the industry of the soldier. Taking this into connection with the fact that at the outset of his career, much of the time of the private is taken up in learning the duties of his profession, we cannot but come to the conclusion, that very little is wanted to improve his condition during the first few years of his service. Young soldiers are almost always contented. It is when they have sickened of the novelty of military service, that they begin to feel all the wretchedness attendant on the monotony of barrack-life. It is then that they ask themselves :—to what does such an existence tend ? Awakened from their fleeting enthusiasm, they look at the prematurely aged forms of soldiers of twenty years' service, and ask, with a despairing tremor, if such is to be their future. It is true that the limited service system gives them a gleam of hope, but it is not hope of the right character. We would desire that it were the hope of staying on and rising in the service ; but it is, alas ! the hope of leaving it for ever. Is this hope to be born of increased pay ? This is the question we propose to consider.

We have stated our belief that for the first few years of his service,—the first four or five,—it would not be advisable to increase the pay of the soldier. If an increase is to be made at all, it should take the form of a gradual addition, year by year, to his income. But we question whether any addition whatever, of a moderate nature, would make entrance into the service more attractive to the peasant, or continuance in it more attractive to the young soldier. It would not make it more attractive to the peasant for the following reasons. In the first place, the English peasant instinctively hates soldiering. The revelations made to the cottages only in recent years by the penny press, have not lessened his aversion. On the contrary, the same conviction which has long pervaded the educated middle-class has begun to find entrance amongst the more enlightened of the labouring class, that if a man have brains or talents, or acquirements of any sort, he will find a more likely and a more profitable field for their development in any branch of civil life than in the army. We do not believe that the fact of the existence of the punishment of flogging in the army has much

effect in deterring men from entering its ranks. We do not think that the class, from which the military raw material is produced, think much about that question. The fact is, that military-service never has been popular in England. It was not popular in the days when there were few other openings to the poorer classes, and it certainly is not more so now when it has to compete with the mills of Lancashire and the sheep-walks of Australia.

Admitting then the existence of this aversion, the question is still before us, whether increase of pay would tend to diminish it. Again must we express a negative opinion, and we will frankly state our reason. Nobody denies, it is indeed patent to all, it is known in the cottages as well as in the towns, that within the last ten years a wonderful improvement has been made in the condition of the soldier. We have enumerated some of these improvements; and it will be quite unnecessary for the purpose of our argument that we should recapitulate, or enter into any full detail regarding them. We wish merely to advert to the fact that before any of these changes were introduced, when they were merely under discussion, very different prophecies were hazarded as to the result they would produce. Whilst the officers in favour of the change indulged in the most favourable opinion as to their working, those of the old school augured every possible evil. The maxim upon which apparently the Duke of Wellington's civil administration of the army was based, that the soldier could be kept in an state of obedience, not merely by the strictest discipline, but by the denial to him of all indulgences, by keeping him in a state of moral and mental degradation, found followers and imitators after his demise. Relax one thong of the bands with which he is now bound, asserted they, and he will gradually unwind himself altogether. He will proceed from one relaxation to another, until the very core of discipline is sapped. The advocates of reform only partially agreed with these views. They held indeed, that it would be as impossible as it was in their eyes undesirable to loosen only some of the degrading bonds which made the English soldier, as a human being, a reproach to his fellow-countrymen. They believed that, in this case above all others, that which was morally right could not be politically unsound, and they argued that it was unworthy of a great nation to continue to keep the soldier alone of all classes, persistently and with design, in gross and degrading ignorance. They felt that not only his physical, but his moral condition, up to that time neglected, purposely kept dark and degraded, ought to be greatly improved. Such were their views as a question of

right. But when they looked at the consequences, they differed even more widely from their opponents of the old school. Far from seeing in this relaxation of bonds which had become, as they believed, too tight for endurance, any cause of apprehension with regard to discipline, they regarded it as the means whereby the soldier would become a better soldier as well as a better man. They looked forward to making him a useful, instead of a dreaded member of society ; to rendering him content with his lot, in place of cursing it ; to give employment to his weary hours, instead of forcing him to spend them in that idleness which is the root of all evil ; to weeding him from the habit of drinking, instead of compelling him to fly to stimulants for forgetfulness ; to making him an educated, a reasoning being, instead of one whose worst passions were fostered by compulsory ignorance. All their measures, in fact, tended to this result, and they believed moreover that when these results had been accomplished, the difficulties which even then, though to a far less extent than now, lay in the way of the recruiting officers, would disappear, and that service in the army would become as popular as it had, till then, been the reverse.

Now it is almost unnecessary that, after a trial for ten or twelve years of the new system, we should record how it has worked. It will suffice to state that the men of the old school, the supporters of repression, of rum, and of ignorance, no longer exist, that every one is in favour now of treating the soldier in all matters, not affecting purely military discipline, not only as a human being but as a citizen of Great Britain. Many of the courses that were to humanize him have been adopted. In this country almost every suggestion tending to his improvement has been carried out. His rations are admirable ; he has the best beer that Burton can produce, in place of the deadly rum of ancient days ; the new barracks that are being built for him are palaces in comparison with those of times gone by ; the hospitals are all that could be wished for ; punkahs are pulled over him, and in all places where *tatties* are useful, that comforting article of furniture is supplied to barracks. His nights are no longer rendered sleepless by the attacks of mosquitos, for he is allowed curtains as well as punkahs. Nor is his moral condition less cared for. A plentiful supply of books, newspapers, and periodicals ; occupation of a remunerative character in the trade in which he has been brought up ; a plot of ground for a garden ; these are all available for him, and should he not take advantage of them, the fault must rest with him, and not with the authorities.

Yet with all these advantages, admitted and patent to the world, one result has not been ascertained : the service has not

been popularised. The loosening of the bonds of vice and ignorance has indeed made the soldier a better man, but it certainly has not made him more contented with his lot in life. On the contrary, he sees now, to a greater extent and to a more extended degree, how great is the abyss between himself and the citizen. The love of freedom and individual liberty is so deeply implanted in the breast of every Englishman, that the soldier, if a man of energy and enterprise, cannot fail to draw an unfavourable contrast between his position and that of those who are labouring on their own account. Hence it is, that the best men, their minds enlightened by education, and their intelligence quickened by experience, almost always take advantage of the limited service act, and take their discharge at the earliest opportunity. Some indeed are not content to wait so long, but when possible, purchase their discharge. It has thus happened that the effect of the relaxation of the old shackles has been actually to increase discharges from the army, and, unfortunately, whilst it has done this, it has not simultaneously increased the admissions from outside. The increase of education and general knowledge has not been in the army alone; it has spread all over the country. The same causes therefore, which have contributed to produce an increase of discharges from the army, have brought about, amongst the labouring population, a greater reluctance than ever before existed to enter into it. In the earlier portion of this article, we have referred to the competing influence of America, the colonies, and other places. In comparison with the inducements which these offer, the newly-introduced advantages of military service are not appreciated. Against these, in fact, the bid for the labourer's service is not high enough.

What will make it so? Will increased pay to the non-commissioned officer and private bring about such a result? We greatly doubt it. It is not, in fact, the small amount of his pay that constitutes the grievance which at the termination of his first period of service sends back the soldier to the world. Small as it is, it is still greatly larger than the amount doled out to the privates of the French, the Austrian, and the Prussian armies. He is in every respect better cared for than they are. He has better food, better accommodation, a larger amount of attendance. Yet, whilst they are comparatively contented, he is dissatisfied. The difference of national character cannot altogether account for this marked difference of feeling. There is another, a more marked, a very real, and a very vital difference, to which we shall presently refer. We shall endeavour, however, first to show that increase of pay would not remove that desire to leave

military service on the first opportunity which we believe to exist. We leave out of consideration, entirely, the important fact that the increase, to bring the profits of the soldier on a par with those of the members of his class engaged in civil employments, would constitute such an augmentation of the military budget, as would terrify any Chancellor of the Exchequer, and impart renewed energy to the partisans of the Manchester school. We would argue the question on its merits, and we think we shall be able to show that an increase in the pay of the private would most probably have an effect precisely the opposite of that which the supporters of such a reform anticipate.

Any increase of pay to the privates would, we presume, be a gradual increase, to be given after so many years of service. Doubtless other conditions, referring to the good conduct of the private during that period, would be added. But that would be the main principle. Now those who consider that a mere increase of pay on such conditions would satisfy the natural ambition of an ordinary man and would keep him in the ranks, argue as if men were not men but machines. What is the bright hope which the recent spread of education has awakened in men's minds, which has made them eager to demand their discharge at the earliest opportunity? It is simply the longing desire to attain a field in which they may exercise their own energies for their own advantage. The increase of pay, in a confined sphere like that of the army, offers to them no hope of attaining that end. Under ordinary circumstances, a rise above the non-commissioned ranks is denied to them. To what then have they to look forward? What will their increased rate of pay procure for them? They are not in want of material comforts. For these the Government provides. What then will a soldier do with his increased pay? If he saves it for the twenty years that entitle him to his pension, he has seldom health at the end of that time to enjoy it. What then, we repeat, will he do with it? We cannot answer for all,—we cannot reply for the idle, the dissolute, and the drunken. But we are much mistaken in the teaching of the past, in our study of human nature, if the good soldiers, the men of active minds and enterprising characters, would not save it up for the purpose either of buying their discharge at the earliest possible period, or of supplying themselves with a small capital upon which to enter into civil employment on the completion of their first period of service. An increase of pay to the privates would in fact tend inevitably to increase discharges by purchase, and discharges after the completion of a period of service.

But, if ineffective in this respect, it would be equally undesirable in another point of view. It would, we think, be very impolitic to make the condition of the private a condition of too great ease,—to give him too great a command of cash. Nothing, in our opinion, would tend more to foster a bad feeling,—that is to say, a feeling of improper independence than such a procedure. It would nourish that worst and most condemnable part of the military spirit, which in France, in the days of the First Empire, contemptuously applied the term '*Pekin*' to every one who was not a soldier. It would most certainly render it more difficult to maintain discipline, for all the evil-disposed men would at least have the means whereby to indulge in their favourite vices. In addition to this, we may remark that in itself it constitutes but a poor and mean way of rewarding military virtue; that it is in fact a method essentially anti-military; utterly opposed to that spirit of chivalry which, alike in ancient times and in the middle ages, constituted the moving impulse of a really national army. This we conceive to form no light objection in the way of its being tried. Not that we would assert that under the present system chivalry reigns in the breast of every corporal and private. That is indeed too great a desideratum to be easily attained. But what we do insist upon is this:—that whilst money-payments are kept as much as possible out of the sight of the private soldier, then the reign of chivalry is possible; where such payments are put prominently forward as an inducement to continue in the service, there the mercenary instincts alone are fostered, and chivalry dies. But it may perhaps be urged that no increased pay should be granted until after the conclusion after the first period of service, but that then a large bounty should be offered for re-enlistment, and increased pay should follow that step. It is probable that by such means many old soldiers would be recovered who, under the present system, are lost to the State for ever. But we cannot believe that such a boon would very much affect the recruiting grounds. An increase of pay after ten years' service, unaccompanied by any prospect of rising beyond the barracks, would constitute an advantage too remote and too unattractive to induce the population of the three kingdoms to enlist in the first instance. Now this is the great desideratum. Unless legislation touches this,—the vital point of the whole question,—legislation will be useless. This plan would no doubt, by inducing men to re-enlist at the expiration of ten years' service, to a certain extent lessen the drain upon the population. But it would not put a stop to such a drain altogether. Calculating the yearly losses of the entire English army from death and

invaliding alone at 7,000 men and from other causes at 3,000, (independently of the proportion who under a new system of bounty and increased pay would re-enlist) there are thus 10,000 annually to be provided for by the recruiting-grounds of the country. The remote attractions of increased pay after ten years would not draw one tithe of these to the ranks.

We think we have now shown that the specific of an increase of pay to the privates as a means of popularising military service is not only unsound and impolitic, but that it would end in failure. We are confident that in no single point would it answer the expectations which its advocates have formed regarding it, whilst it would cause a drain upon the resources of the country such as no Chancellor of the Exchequer could contemplate without dismay. We dismiss it the more readily, because we propose to submit for consideration another system, of proved efficacy in other services, causing no extra expense, and necessitating only the trampling under foot of some prejudices which are unmistakeably existing out of their time in the latter portion of the nineteenth century.

Before we advert to the scheme itself, we will state in a few words the principle upon which it is founded. It is founded on the recognition of the feelings and impulses by which the majority of men are actuated in their struggle with existence; on the encouragement of that aspiring spirit which lies at the root of some of the noblest impulses of the human heart. It is our firm conviction that only by an appeal to, and by an encouragement of, those legitimate aspirations, will the generality of men be induced to oppose a bold front to the temptations which a life in a barrack tends so much to encourage. To borrow the noble language of one of the greatest of English statesmen, one whose marvellous career presents so much to ponder over and admire;—when men do not aspire they will grovel. Now all will admit that to maintain an hundred and fifty thousand men in a service in which they cannot rise to its higher offices, is to discourage the great majority of them from the cultivation of the intellectual aspirations, naturally implanted, more or less, in the heart of every man. Shut out from aspiring, it has followed that the soldier has grovelled. Or, when his natural instincts have revolted against a course so downward, so deadening, so self-destructive, he has waited silently the moment when he could leave a service in which his better nature, his higher thoughts, were daily and often hourly seared by the hot iron of a compulsory depression. Now, by the plan we propose, we would appeal, not to the mercenary instincts, but to the better, the God-implanted feelings of the individual man; we would

remove at once the barrier which, by its mere existence, has served to check him and drive him back into himself; and although we would take every precaution that no man should be promoted who was not qualified for such promotion, we would, in every feasible and legitimate manner, encourage all to prepare for that new life, the very vista of which in the distance would awaken all the energies of the soul.

To demonstrate by the experience of the past, that the adoption of the principle to which we have alluded would most certainly produce the results we anticipate, is, happily, no difficult task. That principle, though in an unacknowledged form, influenced actively the enlistments into the small English army, which, prior to 1859, received the pay and served under the orders of the East India Company. It was an admitted fact that not only was recruitment for the Company's service a matter of far greater ease than enlistment for the Royal army, but in numberless instances the recruits came from a better class of men. The reason was plain. The Europeans in the pay and service of the Company constituted a force extremely insignificant in point of numbers, yet from this small force all the many non-military appointments under the East India Company were filled up. From this source were supplied all the lucrative and highly-considered posts in the subordinate grades of the Commissariat and Public Works Departments. But this was not all. There existed a grade below indeed that of commissioned officer, but above that of the non-commissioned,—the grade of subordinate staff officers. Those who attained to this grade, were styled commissaries, overseers, conductors, and sub-conductors. It was possible too to mount from this grade to a commission. In addition to this, there were in Bengal alone upwards of an hundred and twenty regiments, regular and irregular, which were supplied from the small European force of the Company with serjeant-majors, and quarter-master serjeants. The Ordnance and Barrack Departments likewise took their proportion,—no small one,—of non-commissioned officers, sub-conductors, conductors, and overseers. Thus it happened that although nominally there was but little difference between the conditions of service in the Company's army and those of the Queen, practically there was the difference of a very important principle. For the privates in the Company's army had their better and higher feelings constantly appealed to. They had only to aspire to rise. The appointments open to them were so numerous, so lucrative, leading to a position so much superior to that open to them in their regiments, that there was a constant encouragement to all of them to qualify themselves for something better,—not, as in

the present day, by quitting a service which shut out from them all prospects, but by fitting themselves more and more for their position, by studying to be better in their moral conduct, and more useful in the acquirement of professional qualifications. The after-career of these men was thus widely different from that of their comrades in the Royal army. They attained gradually to staff appointments. Being allowed good substantial quarters, each quarter constituting a house by itself, they generally married. Their allowances enabled them to give their children a sound practical education. Their position was not only well recognised and highly respectable, but in the eyes of the soldier it took the shape of the *ne plus ultra* of human happiness. So large were the numbers of this class, that they constituted a society by themselves, whilst, as a society, it enjoyed this great advantage, that its members were men of the same class,—men who had gone through the same training and the same school,—men who were therefore able to feel that ease in their intercourse with each other, which equality in station and similarity in training almost always produce.

That such positions were attainable,—and attainable solely through the ranks of the Company's army,—constituted the real reason of the greater extent of its popularity in the recruiting grounds of the United Kingdom. It was impossible that facts like these could long remain unknown. Hence it was that the Company's service attracted the best class of recruits. Its regiments had within their ranks many men of a good education, sometimes even gentlemen, who, unsuccessful in their early careers, hailed the chance offered them by a service in which it was possible to rise by good conduct to a respectable position,—military, yet outside the barrack yard. Lord Ellenborough used to say that there was more romance in the ranks of Bengal artillery than in any similar number of men in the world. His meaning was that that splendid service, with the numberless staff appointments in the Ordnance, the Barrack, the Public Works, the Commissariat Departments depending upon it, attracted a greater number of broken down gentlemen and ruined men of education than any other body in the world. The glorious deeds of the Bengal artillery are written in many a battlefield. No more splendid achievements illumine the history of any artillery in the world. And they performed these deeds, whilst supplying conjointly for a very long time with one, only for the last thirty years of their existence with two, and for the last three or four years with three, European regiments, the entire subordinate staff appointments of the Presidency. It was thus apparent that whilst the system attracted good men from without, the

service did not in the smallest degree suffer from the great drain falling upon it, but during all that long period of an hundred years gained and maintained a reputation, which, like that of its contemporary, the Company's European regiment,* was unsurpassed and unsurpassable.

This system then answered in every way. There was no difficulty in recruiting, no deterioration in the new regimental material; notwithstanding the drain for staff appointments made upon it, there was comparative contentment in the barracks, and absolute contentment in the subordinate staff grades. Such a wide field has seldom been offered, and probably will never be offered again to the outside labouring and needy classes. In a few years a recruit might become a serjeant, then a sub-conductor free from all restraints of barrack-life, a conductor, an assistant-commissary, a commissary, often after that an officer! And what were the requirements necessary for such a line of promotion? Simply good conduct, ordinary intelligence, and the necessary rudiments of education. The system was in its way perfect.

Where is it now? Gone,—gone alas! with many other good institutions which existed before the mutiny,—hastily, or meanly, or ignorantly, certainly ruthlessly, chopped off. The subordinate staff appointments indeed exist, though in diminishing numbers, but there are eight times the number of Europeans to compete for them. Where there were five thousand men from whom to select candidates there are now forty thousand. The vacancies which occur in the appointments which were then all filled up, are not so many as to be materially felt among so large a body of men. The consequence is that they do not, they cannot affect the conditions of the service. That service, with this vivifying principle so lessened, so diminished within it, no longer attracts the outside community. By the absorption of the advantages of the Company's army, great for so small a body, into the enormous army of the Queen, their effect has been destroyed; they are no longer appreciable. We cannot, at least we ought not to be surprised. When we stated just now that there are now eight Europeans to compete for the prizes of the service instead of one as formerly, we greatly understated the case. This indeed is the result of a rough computation of the number of troops in the Bengal Presidency, but it must be remembered that these troops are constantly being relieved, and that the proper proportion is the number of the troops in all India before the mutiny to the total number of troops now in Her

* Now H. M.'s 101st Bengal Fusiliers.

Majesty's army. That at least is the calculation which ought to be made, if we are arguing as to the effect which the subordinate appointments in India have on the recruiting grounds of England. But in fact the point is altogether beyond argumentation. It is admitted that those attractions have lost their charm; that considering the scattered state of the British army, the impossibility of calculating as to what quarter of the globe a regiment may be sent, not one man in a thousand now enlists with a view of competing for the once prized appointments of Indian service.

This then is the present condition of the army. No tangible attractions are offered by the recruiting serjeant, his duties have been deprived of much of their romance, and his eloquence is tamed down by the matter of fact and commonplace picture present to his mind. The consequence we all know. The recruiting of the army is becoming yearly more difficult.

We have been induced to give details regarding the conditions and the results of the late Company's service, because, as we stated at the time, those conditions and those results involved a great principle. It is not because these things are things of the past that we praise them; it is only because we hope to gather from those old relics a principle which may be well applied to present difficulties. We do not believe that the entire restoration of the past system would remove those difficulties. At the best, they would remove them only so far as a local Indian army would be concerned. With respect to the Imperial army, they would remain in as full, perhaps even in greater force. But the principle is immortal. How to apply then that principle which succeeded so well with a small army to the entire army of Great Britain, is the point to the consideration of which we propose to devote the remainder of this article.

In order to aid us in arriving at some practical results on this point, we propose to consider in the first place the mode in which the armies of the three principal States of Central Europe, France, Austria and Prussia, are recruited and officered. From this consideration we may hope to deduce some results which will, we trust, be considered not inapplicable to the question on which we are engaged. Our task regarding the three nations referred to is the more easy, as full details have been given regarding the organization of their several armies in a late number of *Fraser's Magazine*.

Up to the time of the Crimean War, the French army was recruited by means of the conscription. In 1859, however, certain reforms were made, which had the effect of greatly popularising the service. It was our good fortune to see a great deal of

the French army in the year 1863, and we were greatly struck by the feeling of entire contentment that pervaded its ranks. Nearly one-half of the vacancies for that year, close upon 40,000 men, were, we were assured, filled by voluntary enrolments. The fact is, the present Emperor has made the condition of the soldier his special study. Whilst his enemies, in spiteful envy at his popularity with the troops, never tire of asserting "*il a gorgé l'armée*," the simple truth is that he has treated his soldiers as human beings, as men who can think and feel and reason like the rest of the world. He has increased the pensions of the privates, facilitated the granting of exchanges and substitutes, and given the men numberless encouragements to return to military service after their period has expired. It could not indeed be expected that military service in a country, limited though it is to seven years, should become so popular as to induce the labouring classes to furnish 80,000 recruits every year; but that it supplied half that number is, we think, an incontestable evidence of the comparative popularity of military service in France.

Let us now examine the mode of promotion adopted in the French army. This is given in the following memorandum embodying the principal provisions of the Ordonnance of April 14th, 1832, and which is still in force. It runs thus:—

"No private soldier eligible for promotion before six months' service in his grade; corporal, ditto, ditto. All other sous-officers up to adjutant sous-officers required two years.

"Sous-lieutenant must be eighteen years old, and have served as sous-officier two years (consequently in all three years); or have been an élève of one of the military schools, and *passed his examination as such*. He requires two years' service in his grade to be eligible for promotion to lieutenant, who also requires two years; captains four years, chef de bataillon, escadron, or major three years, lieutenant-colonel two years, after which three years' service in the lower grade is required before an officer is eligible for further promotion.

"One-third of the vacancies for sous-lieutenant is reserved for the sous-officers, two-thirds élèves of the schools.

"Two-thirds of the vacancies for lieutenants and captains are filled up according to seniority; one-third by selection.

"One-half of the vacancies for chef de bataillon, escadron, is reserved for seniority, the other half for selection, all majors (adjutant-major) the latter.

"In the colonies or on active service, the periods required for rendering eligible for promotion may be curtailed; they may be altogether dispensed with—either on account of a distinguished

“ action that has been mentioned in general orders, or to fill up as many vacancies as are absolutely necessary to fill in a corps acting in the field.

“ In war time or in such corps as are actually engaged in the field, *one-half* of the vacancies for lieutenants and captains is reserved for selection.

“ No honorary military grade can be conferred, nor a rank higher than that belonging to the employed Officers that have been pensioned can never be replaced in activity.”

Now the main principle pervading these rules so far as they affect the privates is this:—that one-third of the vacancies for *sous-lieutenant* are reserved for the non-commissioned officers. The remaining two-thirds of the officers are trained in the military schools. Owing however to the system of selection adopted in the higher grades, it seldom happens that a non-commissioned officer rising from the ranks attains to a higher grade than that of captain or of *chef de bataillon*. But it must be admitted that these grades are sufficient in a time of peace to gratify the laudable ambition of a volunteer or a conscript. In time of war the promotion to grades still higher would naturally become more easy.

That the advancement to the higher grades of men promoted from the ranks is not greater, cannot, we think, be attributed to any defect in the principle on which the French military system is founded. That principle is simply the securing of equal rights and equal chances to all. That those who rise from the ranks do not rise higher is rather due to the fact that they have to compete with men who have received a thorough education in the military schools, and who thus start with an immense advantage over their comrades in the ranks. Cases however still occur in which the staff of the marshal is bestowed upon a self-made warrior.

It is no doubt desirable, as a rule, that those who hold high rank in the army of a country should belong mainly to the governing classes, or rather, that their interests should be identical with the interests of society at large. This is accomplished in the French system by the principle of selection which prevails after the rank of field-officer has been attained. This system of selection brings about the same results, only by a different process, as the system of purchase in the British army. By means of both, young men are enabled to rise to high commands. Which is the better system may be doubtful. Theoretically perhaps the French practice has the advantage. Probably however each is best adapted to the country to which they severally belong.

The constitution and habits of the French army are so entirely different from those of the English, that no advantageous

comparison can be made between them. That the existing English system is not at all adapted to the French army is certain. Before the revolution of 1789, the organization of the French army was not unlike that of the English. The result in the field may be told by the words 'Minden' and 'Rossbach'; the effect on discipline, by the fact that the announcement of the principles, known as the principles of 1789, was sufficient to sever the tie between officer and private, and to turn the army against the system of exclusion of which they considered the sovereign and the aristocracy to be the key-stone. It is an undoubted fact that the guaranteed promotion to one-third of the commissioned grades to men in the ranks constitutes, in the present day, the vivifying principle in the French army. Let it be well borne in mind, however, that this principle, advantageous to the masses by opening out to them a certainty of the rise of a number amongst them to good offices, is deprived of any noxious character it might have by the mode of selection adopted with reference to all who have attained the rank of field-officer.

We turn now to the Austrian army. The conscription in Austria embraces all classes of society except the great nobility. But the service is so far from being unpopular, that numbers enter its ranks voluntarily, content to strive for a position which gives them a certain *status* in society, and allows them privileges which compensate, to a great extent, for their small modicum of pay. "A man," says the writer in *Fraser's Magazine*, "may enter the army as a conscript or volunteer and afterwards become cadet; or he may volunteer as cadet at first, thereby binding himself to eight years' service; and this is the most usual course." The same writer continues thus:—"The Regimental cadet has, properly speaking, no rank; but it is usual, as he learns his work, to give him honorary rank as corporal and serjeant. * * * During six to eight months in the year, regimental schools are held for the candidate officers (cadets) and candidate under-officers (lance-corporals and privates) the teachers being officers, and the commandant, either a major or senior captain; the subject being chiefly military, the junior scholars who may need it receiving also elementary education. The system works very well, and very good practical officers and non-commissioned officers come out of these schools."

For the purpose of supplying a sufficient number of scientific and highly-educated officers, similar to those who pass into the service through the schools in the French army, there have lately been organised a great number of military schools in connection with

the Great Military College, for officers of the line, of Neustadt. The pupils in this college, 468 in number, are educated gratuitously. Formerly one-fourth of them were nominated by the Provincial Estates, the remainder by the Emperor, but the system is now stated to be as follows :—

“ The college at Neustadt and the other military establishments all work into one another ; for instance, only those pupils of the junior schools that give a promise of greater proficiency are passed into the cadet schools, the others going into the army as non-commissioned officers ; and only the better cadets are passed into the academy at Neustadt, the others going as cadets to the regiments, to take their chance of promotion as practical men. Nearly all the academy-men come out as officers, and are allowed to select the corps they may wish to serve in ; some few who fall through come out as cadets. ”

The system of promotion adopted is thus described :—“ The proprietor of an Austrian regiment promotes up to the rank of first captain, and the Crown from major upwards. It was necessary to mention this, because it has to do with the qualification-lists that are annually made out for the guidance of the proprietor and the Crown in the exercise of this very important function. These qualification-lists are made up for the officers and cadets by all the field-officers of the regiment or corps *in committee* ; or in the case of single battalions the two senior captains act as field-officers. The lists for the non-commissioned officers are made up by all the officers of the company, squadron, or battery, *also in committee*. These officers, therefore, assume a responsibility, and the possibility of personal pique being gratified at the expense of ruining the prospects of an individual, as has more than once happened with the confidential reports of the British army, is very much diminished ; but, in order to give even those whose conduct may be deserving of censure, or who have proved themselves simply inefficient, every fair chance, the regulations prescribe that whenever anything detrimental, however trifling, has been introduced into the lists, the individual to whom it applies must be made acquainted with it, and is required to affix his signature in evidence. ”

The writer, from whom we have so largely extracted, considers that “ on the whole, the Austrian system is more worthy our own attention and perhaps imitation, in some respects, than any other. ” We cannot share that opinion. In the first place, proprietors of regiments are now unknown in the British army, whilst most of the Austrian regiments, except the Jäger battalions and some others, belong to the influential noblemen whose name they bear. The writer points out how badly the system

works in this respect, and we are of opinion with him that the most urgent reform required in the Austrian army is the placing all the regiments on the footing of the Jäger battalions. It must be admitted however, that by the existing system, promotion up to a certain grade is provided for a certain number of conscripts and volunteers. Practically, however, a conscript or volunteer seldom rises in the infantry above the rank of captain, in the cavalry never so high. From our own personal experience of the Austrian army in 1863-64, we came to the conclusion that the men were capital material, that they were happy and contented,—the German element at all events,—but that they entertained the poorest opinion of their superior officers. One private, with whom as a Jäger or keeper in the Imperial service, we wandered over some of the glorious mountains of the territory known as the Salzkammergut, told us that he could never forget Magenta, where the division, with which he served, was for thirty-six hours without food, and forty-eight without orders.

“With the exception of clergymen and a few others,” writes the Military Correspondent of the *Times* with the Prussian army, under date the 8th June last, “every Prussian in the year in which he becomes twenty years old, is liable to military service for five years, three of which he spends in the regular army, and two in the reserve. On completion of this service, he is placed in the first levy of the Landwehr for seven years, and afterwards in the second levy of the Landwehr for seven years more. When it is necessary to raise the regular army to a war-footing, the reserve is first drafted into the ranks, then the first levy of the Landwehr, and afterwards, if necessary, the second levy.”

So far as regards entry into the service, for which, it will be seen, the entire male population of Prussia is liable. The first step to be adopted in order to become an officer is thus described by the writer in *Fraser* :—

“Any person desirous of becoming an officer must enter a regiment, battalion, or corps, either as a volunteer for one or three years,* or have been regularly conscribed as a soldier. Any sub-officer or private who has completed his seventeenth year, not yet attained his twenty-fourth birthday, and served six months, has a right to demand an examination for the rank of *Porte-épée-Fähnrich* ;† this is the first step, and the

* The one-year volunteers are candidates for commissions in the Landwehr.

† *Porte-épée* is the silver sword-knot worn by all Prussian officers. The *Fähnrich* or ensign, who wears this distinctive mark without the *spaultettes*, is in fact a candidate officer.

“ individual who attains it performs most of the duties of an officer. If the commandant of the regiment, &c., think fit, he may permit a young man to go up for examination immediately on entering the service; but the certificate of having passed cannot be granted till the six months’ service has been completed.

“ This examination may be dispensed with altogether, and the individual put on the list for promotion to the rank in question in two cases; *first*, for distinguished conduct in the field; *secondly*, on the production of a certificate from a Prussian gymnasium of having passed the necessary examinations to qualify for entrance at a Prussian university. We must here remark that the gymnasium answers nearly to our undergraduate course.

“ The subjects of examination are:—German language, grammar and composition in writing and orally; Latin language, passages from Livy, Sallust, Cæsar’s Commentaries, Curtius, or Cicero, written from dictation, then translated, grammar orally; French language, passages from French authors written from dictation, translated into German, and *vice versâ*, grammar orally; mathematics, written questions in common arithmetic, theory of equations, progressions or logarithms, geometry, trigonometry, orally the same; geography, mathematical, physical, and political, both in writing and orally; history, in writing, one subject from ancient Rome or Greece, middle-ages in Germany, modern, orally; general history, drawing, plan, perspective; and from Nature, executed in the room.

“ Having passed this examination satisfactorily, the candidate is placed on the list for promotion to the *Porte-épée-Fähnrich*, and nominated when a vacancy occurs, by Royal patent or commission, the individual continuing his service meanwhile in his regiment or corps.*

“ We must here mention, that there exist certain military establishments for cadets, where sons of officers, &c., are educated, as in olden time, at Great Marlow. A proportion of these youths enter the army with the honorary rank of *Porte-épée-Fähnrich*, which after six months’ service attested by their captains, &c., is converted into real rank as such by the issue of a patent.

“ Here we have the first step or probationary period of the Prussian officer; it involves, as we see, two distinct qualifications, the book-learning that may be acquired by the aid of others, but which avails nothing unless evidence has been afforded of the

* There is one *Porte-épée-Fähnrich* in each company, squadron, and battery, who takes the place of a subaltern officer.

“ physical and moral aptitude of the candidate during a previous
 “ period of actual military service ; moreover, the very form of
 “ examination insures a more or less perfect understanding of each
 “ subject, and puts the mere gabble of repetition out of the
 “ questions ; the whole thing, too, has reference to his military
 “ career. The Porte-épée-Fahnrich is permitted to proceed to his
 “ officer’s examination after nine months’ further service, but he
 “ must be under twenty-six years of age. Landwehr officers
 “ whose eventual transfer to the line has been sanctioned by the
 “ King, are permitted to proceed to the line officers’ examination
 “ immediately after they have passed the Porte-épée-Fahnrich one ;
 “ and young men who have either entirely or nearly completed
 “ their university course, and having been, *eo ipso*, without further
 “ examination, named Porte-épée-Fahnrich, may also at once
 “ proceed to the officers’ examination.

“ This takes place at Berlin, and all the Fahnrichs are sum-
 “ moned to appear, and be examined according to their seniority ;
 “ ‘ the honour-men ’ are put on the list for extra promotion, the
 “ pass-men for promotion by seniority, according as vacancies may
 “ occur. Young men who came out of the cadet institutes with
 “ officers’ patents, have their rank adjusted according to the senior-
 “ ity of the Porte-épée-Fahnrich of the regiment, so that the
 “ latter are not placed at a disadvantage. It seems, however, that
 “ the present tendency is to get as many cadets and as few purely
 “ regimental candidates as possible ; but this is, probably, more
 “ for simply political reasons than otherwise.

“ The subjects for the officers’ examination embrace nearly the
 “ entire cyclius of military art and science, that is to say—the
 “ theory of arms, gunpowder, guns and portable fire-arms, cutting
 “ weapons ; fortification—field and permanent, including attack
 “ and defence ; surveying and plan-drawing, instruments, their
 “ use, topographical surveys, sketching, drawing representation of
 “ ground profiles, &c., military stylistic reports, orders, &c., know-
 “ ledge of military regulations, discipline, courts-martial, &c.

“ Having satisfied all the above requirements, the candidate is
 “ put on the list for promotion, as explained above, and gets the
 “ vacancy that falls to his lot in his own regiment, provided mean-
 “ while he has not forfeited his claim by bad conduct, and *that*
 “ *the corps of officers* who are consulted by the colonel for that
 “ purpose *do not make any objection to him*. An individual thus
 “ objected to is provided for in some other corps.”

It will be observed that the writer states it to be the present
 tendency of the Prussian system to bring in as many cadets and
 as few regimental candidates as possible. He is right in attri-
 buting this system purely to political motives. Within the last few

years, with a large and hostile party to it in the country and the great towns, the Prussian Government has made extraordinary efforts to confine the officers of the army to a class upon the members of which they might confidently rely.

However that may be, and differing as do the constitution of the three armies we have referred to in many essential points, it has yet been shown that they have one principle common to all, and that a principle unknown, as a rule, to the English army. We need scarcely say we allude to the admission to the grade of commissioned officer of a certain number of men who have risen from the ranks. It is our firm belief that the contentment with their profession of the great majority of the soldiers of the continental armies is caused by the existence of this principle. Having ourselves enjoyed opportunities, subsequent to the year 1860, of noticing the condition of the soldier in the three countries we have referred to, we have no hesitation in stating our opinion, that in point of education and knowledge the private soldiers of the English army are much behind those of Prussia, those of France,—and certainly behind the men of the provinces of Styria and the two Austrias who enlist into the Imperial Austrian army. May not this result be traced likewise to the same cause? One instance at least we may give of the state of backwardness existing in some English regiments. During the mutiny, a German, ignorant of the English language, but ambitious of fame and still more of a commission, wished to enlist in an English regiment under orders for India. Accompanied by a comrade, as unacquainted as he was with the language, he found his way to London, and to the Horse Guards. Here the two friends had an interview with the then Under-Secretary, Sir Henry Storks. Fortunately they could speak French, and in that language they made their wishes known to Sir Henry. The interview terminated by their being sent to a regiment about to sail for this country. Mark the result. One of the friends soon found a career in India of far greater promise than military service, and bought his discharge. The other, in about two years after joining, having been, be it remembered, at that time ignorant of the English language, obtained, as best qualified, the position of schoolmaster-serjeant of his regiment. He was, it is true, no great scholar; but being what he was, he was still a greater proficient in the English language, in reading it and writing it, than the born Englishmen and Irishmen of whom the regiment was composed. Now such a case could not have happened in a Prussian, a French, or an Austrian regiment, because education is one of the unroyal roads by which a private must travel to attain to the position of an officer.

We know that it has been said, and will doubtless be said again, that an English army is an army of peculiar formation; that the men like to be led by gentlemen; and that, as a rule, they have little respect for officers who have raised themselves from amongst their own body. We regard this however as a very fallacious argument. Even if it were sound, it would be a question whether it is possible, on other grounds, to maintain the existing system. But we reject its cogency, and for the following reasons. Hitherto promotions from the ranks in an English regiment have been extremely exceptional. Those which have been made were, as a rule, the consequence of some act of great personal daring. There has been no encouragement held out to the men to prepare themselves by means of education to meet the other officers of the corps on terms of intellectual equality. Hence it has happened, in the rare instances of promotion from the ranks, that the men of the regiment have shown their dislike to the man promoted, because they have known that in point of educational qualifications he was in no respect their superior. Men like to be led by those who are superior to themselves. But it is not so much the accidental superiority in birth that they look to, as superiority in attainments,—to that knowledge, in fact, which gives self-confidence, and which enables the possessor to perform the duties of any position into which he may chance to fall. Hitherto the man promoted from the ranks has been unpopular, because not having acquired these attainments nor possessing this knowledge, he has endeavoured to make up for the want of them by bully and master towards his inferiors, by the assumption of a false dignity, which has sat upon him so ill as to expose him to the merited ridicule of those who were formerly his comrades, and who know his real calibre. That the fact of a man rising to a commission from the ranks would not, under proper safeguards, expose him to this treatment, may be fairly reasoned from the example of the continental armies. In those armies he is forced, before he can rise, to pass such an examination as would place him on an equality, in point of attainments, with the men who have entered the service through a military college. His promotion then excites no envy. He has no necessity to assume any dignity. The knowledge he has acquired gives him a power which those who are striving to obtain the same position by the same means would never think of disputing. He is on the contrary respected for having qualified himself for the position he occupies.

But it is urged again that promotion from the ranks would throw too much power into the hands of commanding officers.

Those who so argue can only suppose that the army would, in other respects, be left as it now is, and promotions made without scrutiny or test of any sort. But a measure which had for its object the popularising of the military service as well as raising the tone of the army would go far beyond this. Such a measure would not be complete, unless it brought home to each individual soldier the fact that a commission was a privilege within the reach of those who exerted themselves to deserve it. A stimulus would thus be applied to all,—to all at least who were not utterly demoralized,—to strive for the prize. Such a measure likewise would provide tests and examinations,—not indeed of so rigorous a nature as the ordeal for the commissioned ranks in the Prussian army,—but sufficiently strict and embracing a sufficient number of subjects to give the successful candidate a self-confidence which would enable him to mix on terms of equality with his brother officers,—to inspire respect in the minds of the men. Education, we may be sure of it, so enlarges the mind, exercises such an influence on those who partake of the advantages she offers, that it becomes comparatively easy for those who qualify themselves by her teaching to efface the bad impressions of early life, and adapt themselves to the new and better mould of the society into which they are brought as members.

It will be concluded from the observations we have made, that our specific for popularising the military service is simply promotion from the ranks. Yet, in making this proposition, we would especially guard ourselves against the charge of bringing forward a measure of a revolutionary character. So far from being revolutionary, we are satisfied that our plan, in the modified and guarded shape in which we are about to submit it, is eminently conservative; that it is, in fact, a necessary corollary of the military reforms which have taken place during the last ten years. In the shape to which we have adverted it is simply as follows. In place of allowing entrance to the commissioned ranks of the army to be made in every case through a military college or by means of a public examination of the young candidates, we would reserve one vacancy out of every four for the rank and file. The French give them one-third, we would propose to give them one-fourth. In every regiment we would institute a class for candidates for commissions. The public examinations for passing out of this class should be held once or twice a year at every military station in the empire. It is not necessary to detail here the precise branches of learning which these examinations should embrace, but they should not certainly be of an easier character than those by means of which a purchase-candidate now enters the army.

We are confident that were the offer made to the men, not only would many qualify themselves, but,—what is of greater importance,—it would induce men of a different stamp and higher social position to enter the ranks of the army. In fact by means of this ordeal and its consequences, the army would cease to be regarded as a refuge for the destitute, but would come in time to be looked upon as a ladder by means of which men might educate and fit themselves for the position of an officer.

A measure of this nature cannot certainly be called revolutionary in its character; it would affect no existing interests; it would injure nobody. It would, we are confident, on the other hand, whilst raising the tone of the army, give a stimulus to education all over the country. It would neutralize the effect of the attractions of our colonies and the seductions of Fenianism. It would speedily remove from the rank and file of the army the reproach, that upwards of sixty per cent of their number are unable either to read or to write. It would benefit alike the officer and the private. It would cast down that iron-barrier which makes them at present two distinct nations, with different instincts and different ideas on all subjects, and would bring forward education as the bond by which both could be united. We believe the effect on the morals and discipline of the army would be most beneficial. The better feelings of the men would be encouraged, those that cause them to grovel would receive the severest check. Once more contentment, born of the union of aspiration with encouragement, would pervade the barracks, and evince itself in the manly and self-respectful bearing of the soldier. And if indeed it would not be much of an argument to say, that by such a measure the constitution of the English army would be brought into greater harmony with the constitutions of the armies of the continent, we could, at all events, legitimately rejoice over the fact that the English army would be thereby brought into closer affinity with the customs of English society, with those broad and manly and life-giving principles which form the mainstay and the main element of the English character."

SHORT NOTICES.

The Legends and Theories of the Buddhists, compared with History and Science : with introductory notices of the Life and System of Gotama Buddha. By R. Spence Hardy. London, 1866.

THE priests of Buddha in Ceylon have of late purchased presses and type, and commenced the publication of tracts, pamphlets and serials in large numbers. The King of Siam and one of the native chiefs in Kandy afford them munificent support, and their publications find extensive circulation among the native Singhalese. They put forth many arguments that are new and ingenious; "but the defiant and blasphemous expressions they contain against the sacred name of 'Jehovah' are probably the most awful ever framed in human language." To put them down as far as possible, the Rev. Spence Hardy, then head of the Wesleyan Mission at Colombo, undertook in 1863 to write a pamphlet with a view to expose some of the most notable defects and errors of Buddhism, and the new weapon which the Bishop of Natal had just then forged for the especial benefit of polemical writers, was selected as the most efficient for the purpose. "Buddhism 'not historically true'" was the motto adopted, and the arguments of the good Bishop were followed to the letter. Arithmetic, geology, chemistry and Baconic induction were all put into requisition to prove the physical errors of Buddhism, and the untrustworthy character of Singhalese history. It was asked, for instance, if 10,000 priests were present at the naming of Dutugamana, how were they all accommodated? "How could so small a province as that of Mágam support by alms so great a number of persons; and how could the King provide milk for the rice of all in a country where it would be difficult now to procure a single measure?" Again, if Pruduwása was King in 504 B.C., how comes his great grandson Dutugamana "to bound on the royal diadem in 161 B.C.?" It gives 343 years for only four generations, when the period, according to our modern statisticians, should be only 80 years or 20 years to a generation. Again, how could there be, within a very short period after the landing of Wijoya, one hundred thousand villages in a province far distant from the seat of the principal government, and how could forty-seven of those be inhabited by pearl divers? Then, the

chronology of the Singhalese freely deals in cycles of time which are represented by figures bearing thirty-three cyphers; these must necessarily be "unhistorical." In carrying out this line of argument, a large mass of legends and theories, bearing on history, metaphysics, cosmogony, and futurity, as believed in by the followers of Gotama Buddha, were brought together and published at Colombo under the title of "The Sacred Books of the Buddhists compared with History and Science." A revised edition of this pamphlet constitutes the substance of the book whose title heads this brief notice. It is full of the most outrageously absurd tales that human extravagance could devise. It treats of mountains 36,103,500 miles in circumference, of fish 10,000 miles long, of lions which jump 11,200 feet at a spring, of birds 1,500 miles long, and of trees 1000 miles high. To attempt to disprove them by sober argument is scarce more profitable than to attempt to talk reason to a madman. But inasmuch as those fables, monstrous as they are, form the groundwork of a religion professed "by no less than three hundred millions of the human race," it is of importance that their true nature should be fully exposed, and the reverend author has done good service to the cause of Truth by bringing them to light. His new work may not in any way supersede the author's "Manual of Buddhism" or his essay on "Eastern Monachism," but to men engaged in missionary labours in Ceylon, who are often called upon to meet the priests on their own ground in controversy, it is sure to prove a very useful hand-book.

Institutes of Jurisprudence. By William Austin Montrieux, Advocate of the High Court, Bengal. Calcutta, P. S. D'Rozario and Co. 1866.

ONE of the most promising features in the progress of civilization in this country is the impetus which the legislation of the past few years and the tendency of existing institutions have given to the study of the law by those to whom its administration is entrusted. The revision and codification of substantive law was not the only legal amendment, which but a few years since was so loudly demanded for India. Reform was also needed in the procedure of the courts, and to a great extent in their very constitution. Such reform since then has been, and is being gradually introduced, and the most interesting feature connected with it is the extent to which it has been seconded from within. It has met with no resistance from the

dogmatic conservatism of English lawyers, but has on the contrary been fostered and encouraged by the more liberal education, both at home and in this country, of those who are selected to preside over its tribunals. The special training now-a-days prescribed for the Civil Service and the establishment of Law-Lectureships and other facilities for acquiring a legal education in this country will, it is to be hoped, effect as satisfactory an improvement in the constitution of the Bench, as the labours of the Indian Law Commissioners have effected in the substantive law.

Not the least proof of our assertion is the rapid creation of a law-literature for this country. The publication of text books has kept pace with the consolidation of the Statute law, and has succeeded in a remarkable degree in rendering our legislative enactments accessible and intelligible to all. Meanwhile, doubts have been elucidated and explained by the highest courts of the land, whose decisions and rulings have been given periodically to the world. The work of reform has thus been supplemented by an energy within, an energy pervading all ranks of the profession, barrister, civilian, and pleader alike. It is in this view, that though somewhat foreign to the character of our *Review*, we yet feel it our duty to call attention from time to time to some of the more valuable contributions to the study of Indian law. The last few months have been unusually prolific in such, and we have now several works on our table calling for notice at our hands.

Mr. Montrion's work is one of the most important and original contributions to law-literature that have yet appeared in this country. For eight years a Professor of Jurisprudence in the Presidency College, the author has studied his subject diligently, and has been enabled in the present volume to elaborate some difficult portions of jural science. The subject itself is one of interest to all, but more especially in a country where, in the creation of a codified body of substantive law, it is attempted to found that code upon the universal principles of the law of nations. And in thus publishing his examination of these principles as applied to Indian law, Mr. Montrion, we conceive, has only completed those duties, on which, as we have said, he has till lately been so usefully engaged. Many of his old pupils, we are sure, will be glad of the opportunity thus afforded them of recalling the studies of earlier years, and the words of their revered Professor. And they will be no less proud of the justly high eulogium, with which Mr. Montrion has urged their claims in the dedication of his work to Lord Stanley. "My observation at the college during eight years, and no less in the courts as fellow-labourer with the numerous young law-graduates, enables me to testify (rather I may say to add my

"testimony to the general voice) that the ability and aptitude "evinced by native law-students and by native law-practitioners " (each grade under no ordinary difficulties) are remarkable— "are worthy of admiration and of every encouragement." And these remarks will be endorsed by everyone who has had the opportunity of admiring the legal acumen displayed by some of our educated native pleaders. Mr. Montrieu's book will not be altogether new to many of our readers. It is indeed "based and built upon" his *Manual of Jurisprudence*, a neat little handy-book, the second edition of which appeared about three years ago. But the '*Institutes*' have a wider scope and aim at a "more methodical treatment" and "exact analysis." The present volume is intended as the first portion only of a more complete and elaborate treatise, and we sincerely trust that the author will be encouraged, and find leisure to pursue his investigation of the subject.

The Code of Criminal Procedure (Act XXV of 1861), and other laws and rules of practice relating to procedure in the Criminal Courts of British India. With notes containing the opinions delivered by all the Superior Local Courts. By H. T. Prinsep, Bengal Civil Service, and Registrar, High Court, Calcutta. Calcutta, R. C. Lepage and Co. 1866.

THE post of Registrar to the High Court in its Appellate Jurisdiction is one that has always been coveted by members of the Service, on account of the superior facilities it affords for the study of Indian law. Mr. Prinsep has evidently made good use of his opportunities, and he has conferred a great benefit upon his fellow-labourers in the administration by the publication of the book before us. The bulk of the volume is naturally occupied by the Code of Criminal Procedure, elucidated by the author's remarks and the rulings of the Superior Courts. To this is annexed an appendix containing certain amending and other Acts, the law of procedure by Justices of the Peace in dealing with charges against a European British subject, the laws relating to offences committed in foreign territories and of extradition, and the law and rules relating to the Police. The value of such a hand-book of Criminal procedure may be more easily imagined than described, and we doubt not it will receive the hearty support of all who are engaged in the administration of the law. The work has been printed in a large and clear type with ample margin, though perhaps the text has been unnecessarily disfigured by a number of asterisks and daggers, calling attention to the definitions of the terms employed. It is also much to be regretted

that the author has not supplemented his work with a more copious index to its entire contents, instead of merely confining it to the text of the Criminal Procedure Code. A reference to a particular Section of the Code will not always afford complete information on any given subject, while the student is totally unprovided with any clue whereby to find the Section under which the various rulings are quoted. It is not yet too late to correct this defect, and we earnestly recommend to Mr. Prinsep's attention the compilation of a more particular and complete index to the entire work. A list of cases quoted or referred to might also be advantageously annexed.

It has been objected that Mr. Prinsep's system of reference to the decisions quoted by him is imperfect and valueless. But we cannot concur in such stricture. It would have been impossible, not to say inconsistent with the character of the work, to have published at full length reports of all the cases referred to. Such reports have been published, though perhaps not always under express authority, and they can therefore be consulted on occasion. It was only Mr. Prinsep's duty in the volume before us to call attention to such cases, and this task we think he has successfully performed by quoting the number and year of the order referred to, with a short abstract of the ruling in the case. To expect more is to expect that Mr. Prinsep should edit "under authority" the full official reports of all the cases quoted by him.

The Registration Manual, containing the new Registration Act, No. XX of 1866, with the Registrar-General's Rules, Tables of Fees, Schedules of Stamp Act, &c. By W. L. Heeley, Esq. c.s. Registrar-General of Bengal. Calcutta. George Wyman & Co. 1866.

THE registration of documents affecting the transfer of landed property, although permissible and always encouraged by peculiar facilities under the British rule, was not made compulsory in India until the commencement of last year; and the system then introduced can only be regarded as a progressive step towards the more accurate and complete registration of title. Such as it is however, if it may not be said to have created a revolution in conveyancing, it has undoubtedly had an important effect upon all transactions relating to the transfer of immovable property; and the consequences of ignorance of the law on this subject are so fatal, that every attempt to diffuse a knowledge of its strict provisions must be regarded as a public boon. And in this view Mr. Heeley's book will no doubt

prove of great assistance to lawyers, zemindars, and others concerned in the tenure or transfer of land.

As in reviewing Mr. Prinsep's work, we asserted that the imperfection of the index was its main defect, so the completeness of that annexed to the "Registration Manual" constitutes its chief value. It is in fact a model index, and will be found to supply information on every conceivable point of the registration procedure. The rest of the volume is merely a re-print of the Act and Rules; although Mr. Heeley has done good service in bringing together the various orders on the subject, and exhibiting them in a compact form.

Dictionary of British Indian Dates, being a compendium of all the dates essential to the study of the history of British rule in India. William Blackwood and Sons. Edinburgh and London. 1866.

THE importance of a knowledge of dates does not so much depend upon their intrinsic value, as upon the facilities which they afford for purposes of reference and comparison. They form the "circulating medium" of universal history, by the aid of which we are in a position to take an accurate survey of contemporaneous events in different parts of the world, and so contrast the various stages of civilization. As by reducing the prices of commodities in different countries to the same money standard, we are able to compare their economic conditions, so the use of dates in studying the annals of any country enables us to regard it as one of a family of nations, and to contemplate the successive phases of its history in connection with the manifold conditions of the outside world. The study of dates therefore, considered in this view, is not mere "cram," as is sometimes supposed, but where properly taught and applied, must lead to the most useful results. The mere ability to repeat the dates of the sovereigns of England may in itself be no very praiseworthy acquirement; but if the student has at the same time been taught to use this knowledge for the purpose of comparing and contrasting various events in different parts of the world, the acquisition has been a valuable exercise not of the memory only, but to a large extent of the reasoning powers also. While therefore a good examiner would attach little importance to the correct recital of mere dates as such, he would rather seek to test the use in which this acquisition was employed, and would be right in assigning high marks to that boy who showed that he valued a good memory chiefly as an aid to his reasoning faculties.

Most people have at times to complain of a treacherous memory : there are few of us upon whose minds the history of British India is written so indelibly that we have never occasion to refresh an imperfect recollection. To such this unobtrusive little manual will perform a very useful and opportune part. In 177 pages, nearly half of which again are occupied with a detailed list of Legislative Acts and Regulations, we have in fact a summary of British Indian history up to the year 1860. The book is something more than a dry compendium of dates ; it is an alphabetical index to important persons, places, and events connected with our rule in this country, and under many of the headings we find an interesting abstract of history. We would especially notice those of the *Court of Directors, India, and Indore.*

Report on the Calcutta Cyclone of the 5th October 1864. By Lieutenant-Colonel J. E. Gastrell and Henry F. Blanford, A. R. S. M. With maps and diagrams illustrating the origin and progress of the storm and the track of the storm-wave. Printed and published for the Government of Bengal, by order of the Lieutenant-Governor. Calcutta. 1866.

WE have at length, in the work before us, a fairly detailed account of the great Calcutta Storm of October 5th 1864. It is so common in India for official reports to appear long after all interest in the matters to which they refer has ceased, that when, as in the present case, we receive a digested account instead of the *indigesta moles* which forms the usual bulk of such reports, we are rather inclined to feel grateful to the authors than to blame them for the delay. In the present work we are assured in the preface that the interval which has elapsed since the Cyclone has enabled the writers to avail themselves of greatly increased materials for describing it, and although many details are far from complete, we have, probably, in the book before us, the fullest account ever published of one of the remarkable and destructive circular storms peculiar to the neighbourhood of the tropics.

The Cyclone of October 1864 was, perhaps, one of the most destructive ever recorded. The loss of life, so far as ascertained (a great part from estimate only), is stated to be 48,685 ; this is exclusive of the deaths from sickness attributed to the effects of the Cyclone, which are estimated at 25,000 to 30,000 more, and even this fearful destruction of nearly 80,000 human beings is believed to be probably short of the truth. The destruction of

property belonging to Government in the Public Works Department alone was £140,907; that of private property was naturally enormous, but it has been found impracticable to obtain trustworthy details. We learn however that in the three districts, Midnapore, Hooghly, and the 24 Pergunnahs, upwards of 130,000 head of cattle were swept away, or nearly as many as all the victims to rinderpest in the United Kingdom, while thirty-six ships were wrecked and ninety-seven more severely damaged. When to this fearful list are added the 33,000 human victims of the Masulipatam Cyclone in the same year, (an estimate exclusive of the subsequent deaths from starvation and sickness,) some idea may be formed of the imperative necessity for careful enquiries into the origin and action of the storms to which such losses are attributable, in the hope that means may be found of at least mitigating their ravages.

It is, of course, impossible that we should do more than briefly call attention to this volume; it will, we believe, repay perusal. The cause of the Cyclone is traced from its origin at sea to the west of the Northern Andaman Island on the 2nd of October, during its northward progress up the Bay of Bengal on the 3rd and 4th, and over Lower Bengal on the 5th and 6th, until it apparently exhausted itself amidst a deluge of rain in Lower Assam on the afternoon of the 7th. Amongst the numerous personal accounts of those who experienced the hurricane in different places on its track, and which are incorporated in this report, many are extremely graphic, and give an admirable idea of the fury of the hurricane. We read of the *Alexandra* steam tug, which, while steaming with full power against the wind, was driven thirty miles astern: of Mr. Grant at Kola Ghât, who, after the house in which he had taken refuge was blown away, hung on for his life to the stem of a cocoanut tree, while the water of the river brought up by the storm-wave rose above his waist: of the self-registering anemometer at Calcutta which made an expiring effort to mark a pressure of thirty-two pounds to the square foot, and was then blown away bodily. The accounts of the storm-wave, to which the terrible loss of life recorded is mainly due, are no less striking. It appears to have risen in places as much as sixteen feet above the level of high spring tides, and to have swept over the low but thickly populated tract on the banks of the Hooghly, with a depth of from six to twenty feet.

It is, however, as a contribution to meteorological science that this work is especially valuable. We believe, that it is the most important addition to our knowledge of the phenomena of cyclonic storms that has yet been produced in India. This

is due to several circumstances; *first*, the facilities afforded by the passage of the storm over a country where educated European observers are more numerous than in any other part of India, for obtaining approximately reliable barometrical and thermometrical observations, and especially for determining the time at which changes in the wind took place; *secondly*, to the large amount of information on the subject of cyclones in the Bay of Bengal already collected by the late Mr. Piddington; *thirdly*, to the general progress of meteorological science; and *lastly*, to the careful observations of Mr. Barnes at Kandy in Ceylon, and the valuable assistance thus afforded in ascertaining the meteorological conditions of the area to the southward before and during the Cyclone. Nor should the services of the Madras and Calcutta observatories be forgotten. The result is that a theoretical explanation of cyclones is given different from that previously expected, and that several remarkable phenomena are indicated which were previously unknown. It is shown not only that cyclones are especially prevalent at the change of the monsoons, but that they are probably coincident with the existence of a low atmospheric pressure as indicated by the barometer, together with a strengthening current of air, saturated with moisture, from the south, and due to this current impinging upon a mass of air either motionless or moving slowly in the opposite direction, just as eddies are formed in a stream by the meeting of waters flowing in different directions. It is further shown that a cyclone is, in its origin and progress, no more than a gigantic eddy, with a strong ascending current at or near the vortex, fed by streams of air rushing in from all sides, but especially from that of the current originally productive of the cyclone; not however in straight lines, but, in obedience to a well-known law, in curves, which near the centre are almost circular. To the upward pressure and centrifugal force of the wind the excessive descent of the barometer appears to be due. The most remarkable discovery, however, is that the vortex, when formed, with its well-known central calm, is not constant, as has hitherto generally been supposed, but that the storm appears to generate a series of successive vortices along one line as suggested by Admiral Fitzroy. Thus the vortex of the 3rd October is shown to have been formed 280 miles to the northward of that of the 2nd, which meantime appears to have died out, and it is highly probable that the central calm felt at Contai was distinct from that which passed over Tumlook and Kejla Ghat, and that this vortex again was succeeded by others as the storm travelled northwards in the tract east of the Hooghly, and again north of the Ganges.

Comte classed the history of all human science in three ages,—the religious when everything is a matter of blind faith, when solemn fasts are held in the hope of obtaining rain, and poojah is performed to avert eclipses; the metaphysical, when words take the place of facts, and apparent resemblances are considered proofs of identity of origin, when circular storms are classed, as they were by one not undistinguished meteorologist, with table-turning, or attributed to electricity; and lastly the scientific, when facts are carefully collected, and theories only attempted as an induction from ascertained data. We are glad to find that the law of storms has at last landed on the firm ground of scientific induction.

The work is accompanied by a copious appendix of details, by maps illustrating the course of the Cyclone, the wind observations, and the area flooded by the storm-wave, and by barometric and other tables.

A Trilingual Dictionary ; being a comprehensive lexicon in English, Urdú and Hindí, exhibiting the Syllabication, Pronunciation, and Etymology of English words, with their explanation in English, and in Urdú and Hindí, in the Roman character. By Mathurá Prasáda Misra, Second Master, Queen's College, Benares. E. J. Lazarus and Co. Benares. 1865.

THIS work has few rivals as a dictionary of the English language for the use of native students. Its vocabulary of words is ample, and their meaning is given first in English, then in Urdú, and lastly in Hindí, the Roman character however being retained throughout. It is of course intended for use in the Upper Provinces rather than in Bengal, and we are convinced that it will be received there as a valuable exposition of the English language, and find a place in the library, however limited, of every educated native. And the fact of its having been prepared by one of their own countrymen, will probably not be its least recommendation to those amongst them who are anxiously watching for the results of our present system of English education. If there is one work, which more than another requires patient thought and unwearied industry, we should think it was the compilation of a dictionary, and Mathurá Prasáda Misra, by the successful completion of his work, has satisfactorily proved that our system of training is not always at fault.

The most important feature perhaps in the work is the provision made for the despised and neglected vernacular, and the reason of this is candidly stated by the author

in his preface. The Hindí though possessing but a limited vocabulary and having little or no literature of its own, is nevertheless in his opinion, deserving of greater study, as being the language spoken by the great mass of the people over a very large portion of India, from Bhaugulpore to Lahore. Within this area there are no doubt numberless dialects, differing widely perhaps within a few miles; but the substratum is already to a certain extent uniform, and a national literature is all that is required to stamp the Hindí with a recognized and permanent character. "Hindí, like a modest maid, has withdrawn from the public gaze in towns and cities, yet it has ever been present around our hearths and amid our family circles. Our mothers and sisters, our wives and daughters, exchange ideas only in genuine forms of Hindí." Urdú may be used in public and in the higher walks of life, but when the day's business is over, it is the homely Hindí which is the medium of communication between master and servant or in the domestic circle. It is therefore by means of Hindí as the vernacular, that the Hindoos of Behar and the North-West must have the blessings of education diffused amongst them.

This fact has already been accepted by the Government and the missionaries in the North-West, and among the latter no one perhaps has laboured more earnestly and with greater success towards the promotion of a healthy Hindí literature than Dr. Lazarus of Benares. His is, we believe, the first Hindí printing press that has been set up in the North-West, and it has already been the means of publishing several useful books in that language. Dr. Lazarus has also attempted to prepare a fount of Hindí type that shall combine neatness and perspicuity with economy of space. It is to this gentleman that we owe the "Trilingual Dictionary" before us. Though prepared by Mathurá Prasáda Misra, it was at the suggestion and expense of Dr. Lazarus, by whom the proofs were carefully read and revised. To him moreover the author is indebted for the vocabulary of the roots of English words, the abbreviations used in writing and printing, and the dictionary of quotations taken from the Latin, French, Italian, Spanish, and Portuguese languages, which form an invaluable appendix to the dictionary. The enterprising publisher of such a book will, we trust, meet with the amplest encouragement.
